

**HEALTH AND HUMAN SERVICES**

# PROCUREMENT MANUAL



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# Procurement and Contracting Services Texas Health and Human Services

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## **Section 1: Purpose**

### **1.1 Purpose**

This manual serves as a purchasing guide for the Health and Human Services (HHS) agencies and establishes requirements for interface between the Procurement and Contracting Services (PCS) Division of Health and Human Services Commission (HHSC) and HHS agencies for purchases conducted by PCS on behalf of the agencies.

The manual contains standard procedures for implementing the requirements of Texas statutes and delegated purchasing authority. It is a necessary resource to ensure the application of consistent and sound business practices in purchasing and contracting, and demonstrates PCS's ongoing commitment to increasing communication among the HHS agencies involved in state procurement.

HHS agencies as identified in Texas Government Code §531, are:

- Health and Human Services Commission (HHSC),
- Department of Aging and Disability Services (DADS),
- Department of Family and Protective Services (DFPS),
- Department of Assistive and Rehabilitative Services (DARS), and
- Department of State Health Services (DSHS).

The manual does not address the use and application of the Health and Human Services Automated System (HHSAS). HHSAS guidance is found in the HHSAS training manuals.

### **1.2 Health and Human Services Commission's (HHSC) Authority to Publish Manual**

The authority for the manual is found in Texas Government Code [§§531.0055](#) and [2155.144](#). The policies are established through the authority of HHSC Executive Commissioner and the Deputy Executive Commissioner of Procurement and Contracting Services. The policies are administered by PCS.

PCS maintains the manual in compliance with HHSC and the Texas Comptroller of Public Accounts (CPA) rules. PCS also provides technical assistance to ensure understanding of and compliance with the manual.

Individuals should send suggested changes, additions, and corrections to the manual to the PCS Associate Commissioner for consideration.

## Section 2: Procurement and Contracting Authority

### 2.1 Overview of Procurement Authority

The Legislature delegates authority to state agencies. In some instances, the Legislature has directly delegated authority to HHSC. In other instances, authority is held by other agencies and may be further delegated to HHSC.

#### 2.1.3 Common Commodities or Services

CPA has delegated the authority to HHSC purchase common commodities or services. According to [Texas Government Code Section 2155.144 \(b-1\)](#), those goods and services are "... acquired for direct consumption or use by the agency in the day to day support of the agency's administrative operations, such as office supplies and equipment, building maintenance and cleaning services, or temporary employment services...". These types of purchases must be done according to statutes governing CPA, and must follow CPA rules and policies.

The purchase of certain commodities and services may be exempt by specific statute from the purchasing authority of CPA, exempt from competitive bidding, or may be required by statute to be procured through another specific purchasing method. If goods or services are exempted from the competitive purchasing requirements, the purchasing documentation must contain the specific legal citation authorizing a noncompetitive purchase.

CPA provides a chart that specifies common purchases which are exempt from CPA purchase requirements. [Document Type 9 Exemptions](#)

#### 2.1.4 Other Commodities and Services

According to [Texas Government Code Section 2155.144 \(b-1\)](#), the HHS enterprise is delegated the authority to purchase certain goods and services, including:

- Consulting services;
- Professional services;
- Health Care services;
- Information Resources Technology;
- Goods or Services acquired for the benefit or on behalf of clients of programs operated by an HHS agency;
- Procurements specifically authorized or delegated to an HHS agency by statute; and,
- Contracting out agency purchasing functions or other administrative/program functions.

#### 2.1.5 Client Services Purchases (Goods and Services)

Client service goods and services are purchased according to the applicable requirements in [Texas Government Code 2155.144](#) and [HHS Procurement rules](#).

This law requires HHS agencies to use procurement methods that are approved by HHSC and provide "best value" to the agency. The law also gives HHSC the authority to adopt rules and procedures for acquiring goods and services that apply to all HHS agencies. In addition, [Texas Government Code, Section 531.0055](#) grants HHSC the authority to adopt rules to carry out all agency functions, including contracting and purchasing.

In addition, [Texas Government Code Section 2261.001\(a\)](#) Chapter 2261 State Contracting Standards and Oversight also includes requirements that must be followed for client service contracts.

#### **2.1.6 Delegation of Procurement/Contracting Authority for HHS System**

The Executive Commissioner may delegate all or a portion of HHS contracting and procurement functions to HHS agencies.<sup>1</sup> The Executive Commissioner has delegated purchasing authority to PCS.

#### **2.1.7 Signature and Delegation of Authority for HHS System**

The Governor has granted the HHSC Executive Commissioner the authority to commit the HHS Agencies to the terms of a contract. The Executive Commissioner delegates authority to the HHS Agencies' Commissioner and other staff to sign certain agency contracts and any contract modification on behalf of the agency. [HHS Circular C-046 Delegation of Signature and Threshold Limits for Contracts](#) further defines and clarifies delegation of signature authority and threshold limits for HHSC and HHS Agencies' contracts.

Once the contract has been executed, it is forwarded to the appropriate HHS staff for inclusion in the procurement and contract file. A copy of the executed contract should be provided to the contractor, Contract Manager and agency Program.

PCS will maintain a copy of the HHS Agency delegated signature authority.

#### **2.1.8 Acceptance of Electronically Transmitted and Electronically Signed Contract Record**

Pursuant to [HHS Circular C-038](#), it is the policy of HHSC that HHS agencies may accept electronically signed records, including records transmitted electronically by fax or email, and scanned documents that are attached to emails, as valid signatures for contract. The Electronic Signature Risk Matrix, or equivalent, must be used to determine whether electronically-signed contract records may be accepted.

Interagency contracts between HHS agencies are regarded as low risk, and electronically signed records may be accepted without the need for further risk analysis.

#### **2.1.9 Contractor Responsibility and the Data Use Agreement**

By entering a contract with a Texas Health & Human Services agency, contractors agree to be bound by the terms of the HHS Data Use Agreement at [http://www.hhsc.state.tx.us/about\\_hhsc/BusOpp/data-use-agreement.pdf](http://www.hhsc.state.tx.us/about_hhsc/BusOpp/data-use-agreement.pdf)

#### **2.1.10 Procurement Responsibility Delegated to PCS**

PCS is responsible for procurement activities for all HHS agencies. [HHS Circular C-037](#) defines and clarifies the roles and responsibilities for the various activities required to complete a purchase through PCS.

## **2.2 Grants and Subgrants**

Grants are administered via a contractual agreement between the agency and the party providing the service(s). [Government Code Chapter 2261 Sec.002 \(1\)](#) includes grants in its definition of a contract unless certain criteria are met.

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<sup>1</sup> Texas Government Code §531.0055 (i)



Federal grants have specific contract requirements outlined in the federal Uniform Requirements for [Grants and Cooperative Agreements with State and Local Governments \(OMB Circular 102\)](#). Circular 102 establishes consistency and uniformity among Federal agencies in the management of grants and cooperative agreements with state, local, and federally-recognized Indian tribal governments.

In addition to federal requirements, grants must be administered according to the state's Uniform Grant Management Standards (UGMS) published by the Texas Comptroller of Public Accounts (CPA). The UGMS addresses the following specific grant administration requirements:

- cost principles for state and local governments and other affected entities, including:
  - principles for determining allowable costs
  - selected items of costs
  - statewide and local center service cost allocation plans
  - public assistance cost allocation plans
  - state and local indirect cost rate proposals
- uniform state administrative requirements for grants and cooperative agreements, including:
  - general requirements
  - pre-award requirements
  - post-award requirements including financial administration, property, sub-awards, records and enforcement;
- after-the-grant requirements; and
- single audit requirements.

The Comptroller of Public Accounts serves as the contact for grant administration issues and maintains UGMS. The Comptroller was assigned responsibility for grant management as of September 1, 2011, by the 82nd Legislature, when this function was moved from the Governor's Office to CPA's Texas Procurement and Support Services Division.

### 2.3 Legal Requirements for Purchases

Purchases are governed by federal and state requirements. Some purchases require input or oversight from entities such as the Governor's Office of Budget Planning and Policy (GOBPP), CPA, the Legislative Budget Board (LBB), the State Auditor's Office (SAO), the Office of the Attorney General (AG), and HHSC.

### 2.4 Resolving Conflicts between Federal, State, and Agency Requirements

Generally, HHSC and HHS agencies' rules, policies and procedures can be more restrictive than federal, state, and oversight agency requirements. However, that is not the case when statute or regulation:

- Preempts the agency requirements; or
- Leaves no room for supplementary regulation.

When there is an apparent conflict between requirements, consult with the HHSC Office of General Counsel.

### 2.5 Texas Training and Certification Program

#### 2.5.1 Legal Requirement

[Government Code §2155.078](#) states in part,

*"The commission shall establish and administer a system of training, continuing education, and certification for state agency purchasing personnel . . . all state agency purchasing personnel, including agencies exempted from the purchasing authority of the commission, must receive the training and continuing education to the extent required by rule of the commission."*

Purchasers who have not received their certification cannot certify procurements (refer to Training and Certification Requirement chart). In these cases, certified procurement staff reviews the purchase and certifies compliance with state purchasing statutes and rules.

In order to retain their purchasing positions, all PCS purchasers must be certified within the required timeframe. Purchasers are also responsible for attending approved continuing education classes to maintain certification through CPA.

## 2.5.2 Levels of Certification and Requirements

### 2.5.2.1 Certification Renewal and Continuing Education

Certifications are renewed every 5 years. Certified individuals must obtain 120 hours of continuing education (CE) over a 5-year period with no more than 45 hours in any certification year. To meet the CE requirement, CPA encourages certified individuals to obtain 24 hours of continuing education per certification year.

Certification Year – Certification year is one calendar year from the original issue date of your certification.

Purchaser's certification and training opportunities are found at the following site: [Window on State Government | State Purchasing Professional Development](#)

Training and Certification Requirements			
Purchasing Authority	Required Training	Experience	Certification Required
Zero to \$25,000	Texas Basic Public Purchasing classes (BPP) within their first six-months of employment with PCS.	None Required	None Required
\$25,000.01 to \$100,000	Texas Basic Public Purchasing classes (BPP) and Advanced (APP) Public Purchasing classes (or have the current equivalent certification from a national purchasing association) and pass the CTP exam within eighteen of PCS employment.	One Year	Certified Texas Purchaser's (CTP) certification
Over \$100,000 and RFPs	Texas Basic (BPP) and Advanced (APP) Public Purchasing classes and the Texas Cost and Price Analysis, Negotiations, and Contract Administration (CNC) course (or have the current equivalent certification from a national purchasing association) and pass the CTPM exam within eighteen months of PCS employment.	Three Years	Certified Texas Purchasing Manager (CTPM) certification

## 2.6 Code of Ethics & Conflict of Interest

### 2.6.1 Ethics and Competition

The fundamental premise underlying public procurement is the requirement of equal opportunity allowing all qualified responsive and responsible vendors an opportunity to obtain the government's business:

*"'Competitive bidding' requires due advertisement, giving opportunity to bid, and contemplates a bidding on the same undertaking upon each of the same material items covered by the contract; upon the same terms and conditions involved in all the items and parts of the contract, and that the proposal specify as to all bids the same, or substantially similar, specifications. Its purpose is to stimulate competition, prevent favoritism and secure the best work and materials at the lowest practicable price, for the best interests of the taxpayers and property owners. There can be no competitive bidding in a legal sense where the terms of the letting of the contract prevent or restrict competition, favor a contractor or material man, or increase the cost of the work or of the materials or other items going into the project." (Tex. Highway Com'n v. Tex. Ass'n of Steel Importers, 372 S.W.2d 525 (Tex. 1963) (quoting Sterrett v. Bell, 240 S.W.2d 516, 520 (Tex. Civ. App.-Dallas 1951, no writ)."*

This statement has been used by the AG to disapprove arrangements which allow one bidder/proposer to obtain an unfair advantage or which do not allow free and open competition for a contract.<sup>2</sup>

### 2.6.2 Procurement and Contracting Principles

When carrying out procurement and contracting activities, staff must:

- Operate within the ethics of law, enterprise and agency policy and strive to avoid the appearance of unethical behavior;
- Carry out all responsibilities within delegated authority and applicable law;
- Base contract decisions upon appropriately documented findings of fact and upon good business practices and judgment;
- Consider the best interests of the public, HHS and HHS clients at all times;
- When competition is required, promote competition to the maximum extent practicable and allowable by state and federal laws and applicable policies in order to secure best value and to ensure maximum and free competition for vendors that wish to compete;
- Take reasonable steps to provide potential contractors fair and impartial treatment;
- Ensure costs are allowable, reasonable, and necessary considering price, quantity, availability, and quality;
- Take steps to enhance mutual understanding of the contract terms by parties to the contract, including:
  - Ensuring that all agreements between contractual parties are in writing and in the contract or contract files as appropriate;
  - Developing, and including in contracts, clearly defined sanctions, penalties or administrative damages for noncompliance with contract terms and conditions;
  - Specifying in contracts the deliverables, accounting, reporting, and auditing requirements applicable to funds received under the contract; and,
  - Providing timely and professional customer service to customers, vendors, and the public.

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<sup>2</sup> See Attorney General Opinion Nos. JM-1215 (1990) (county commissioners court may not prescribe prevailing wage rates on anything other than public works contracts); JM-1213 (1990) (city may not require, through bid specifications or ordinance, that city contractors provide employees with basic health insurance benefits); MW-139 (1978) (county commissioners court may not adopt policy against purchase of foreign automobiles by county); H-1219 (1978) (county may not restrict award of printing county jobs to union printers).

### **2.6.2.1 HHS Human Resource Policies**

The [HHS Texas Human Resources Manual, Chapter 4, Employee Conduct](#) contains requirements for employee conduct; including, standards of conduct, work rules and other requirements that must be followed. Violation of these policies may result in disciplinary action, up to and including dismissal, and in some cases, referral to state or federal law enforcement agencies.

A number of the requirements have direct application to contract administration, including the prohibition against:

- Soliciting or accepting gifts, favors, or services that could influence an employee's official conduct;
- A business or professional activity that requires or induces disclosure of confidential information;
- Employment or compensation that could impair performance of the employee's official duties;
- Personal investments that could cause conflict between the employee's interest and the public interest;
- Soliciting, accepting, or agreeing to accept any benefit for exercising the employee's official powers, including favoring one party over another;
- Destroying, falsifying, removing, stealing, concealing, or misusing state information;
- Engaging in relationships with service providers, contractors, and vendors that impairs objectivity in performing duties and endangering confidentiality;
- Accepting honoraria for consideration of services that the employee would not have otherwise been asked to provide if not a state employee; and
- Soliciting or selling products or services to HHS contractors, licensees, or others who do business with an HHS agency.

This listing is not intended to replace the Texas Health and Human Services Human Resources Manual. Consult the Manual and contact your Human Resources representative for further information.

## **2.7 HHS Agency Ethics Requirements**

HHS agencies often have agency specific contracting ethics requirements that are based on law. If an agency has specialized ethics requirements, they are to actively make those requirements known to PCS by identifying requirements that apply to the requested purchase.

## **2.8 Ethics and CPA Delegated Purchases**

In accordance with state law and [CPA Rule 34 TAC §20.41](#), PCS purchasers subject to CPA delegated authority must adhere to the following ethical standards:

### **A state employee must not:**

- Participate or work on a procurement by taking action as an employee through decision, approval, disapproval, recommendation, giving advice, investigation or similar action knowing that the employee, or member of their immediate family has an actual or potential financial interest in the contract, including prospective employment;
- Solicit or accept anything of value from an actual or potential vendor;
- Be employed by, or agree to work for, a vendor or potential vendor;
- Knowingly disclose confidential information for personal gain; or
- Be employed at a pay classification of an A17 or B9, Step 1 or higher if married to an officer, manager, or paid consultant of a Texas trade association of businesses that contracts with the state.

PCS policy requires employees involved in contracting and procurement to complete and sign the *PCS 130, Conflict of Interest Statement PCS Employees Under Authority Delegated by CPA* and the *PCS 140, Acknowledgement of Duties and Responsibilities* Form within 3 days of their employment date and annually, thereafter.

Initial completion of the *PCS 130, Conflict of Interest Statement PCS Employees Under Authority Delegated by CPA*, and the *PCS 140, Acknowledgement of Duties and Responsibilities*, are completed by each new PCS employee during New Hire Orientation. Completion of the *PCS 130, Conflict of Interest Statement PCS Employees Under Authority Delegated by CPA*, and the *PCS 140, Acknowledgement of Duties and Responsibilities* are identified as required task identified on the *PCS 129, New Employee Orientation Checklist*.

Annually, each PCS staff member completes the *PCS 130, Conflict of Interest Statement PCS Employees Under Authority Delegated by CPA*, and the *PCS 140, Acknowledgement of Duties and Responsibilities*. The action is currently completed during the PCS Annual Conference; all staff (Austin and Regional) is present for the conference. The forms are disseminated by each PCS Team Managers during Team Meetings which are held on the last day of the conference.

Once the *PCS 130, Conflict of Interest Statement PCS Employees Under Authority Delegated by CPA*, and *PCS 140, Acknowledgement of Duties and Responsibilities* are signed, PCS Managers submit forms to the PCS Associate Commissioner's Administrative Assistant.

The Administrative Assistant uses the Staff Directory to track receipt of each staff member's *PCS 130, Conflict of Interest Statement PCS Employees Under Authority Delegated by CPA*, and the *PCS 140, Acknowledgement of Duties and Responsibilities*. The forms are placed in each staff member's personal file which is maintained under lock and key by the Associate Commissioner's Administrative Assistant.

## 2.9 Ethics and Former State Employees

**Lobbying of former agency by ex-members of governing body and ex-executive heads.** [Texas Government Code § 572.054\(a\)](#) prohibits for two years after leaving the agency a former member of an agency's governing body or a former executive head of a regulatory agency from making a communication or appearance before an officer or employee of the agency if the communication or appearance is made with the intent to influence the agency on behalf of any person in connection with any matter, such as a contract, on which the person seeks official action. Violation is punishable as a Class A misdemeanor.

**Representation or compensation for services rendered regarding "particular matters."** [Texas - Government Code § 572.054](#) of the Government Code permanently prohibits former state officers and certain former state employees of regulatory agencies from representing any person before their former agency or receiving compensation for rendering service to anyone regarding a particular matter in which the former officer or employee participated while an officer or employee of the state agency. This restriction affects only employees, including exempt employees, who were compensated at or above group 17, Step 1 of the position classification schedule when they separated from the agency. Violation is punishable as a Class A misdemeanor.<sup>3</sup>

### A Former Employee

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<sup>3</sup> "Participated" means to have taken action through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action. (Texas Government Code §572.054(h).) "Particular matter" means a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding. (Texas Government Code §572.054(h).) However, the law does not apply to rulemaking proceedings that were concluded before the former officer's or employee's service ended. Government Code §572.054 was written in 1993 and refers to salary group 17, step 1. Salary schedules have changed several times since 1993. The Legislative Budget Board states that the current legislative appropriations equivalent to group 17, step 1 are as follows from **Schedule A** of the classification salary schedule. Regulatory agencies are defined in Government Code §572.002(8).

A former employee who had a pay classification of A 17 or B 9, Step 1 or higher who ceases service or employment with an HHS agency on or after January 1, 1992, must not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter (a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge or other proceeding, contract, claim, charge or other proceeding) in which the former employee participated during the period of employment, either through personal involvement or because the case or proceeding was a matter within the employee's official responsibility.

## **2.10 Contract Ethics and Required Training**

State and federal law impose ethics standards on government employees, former government employees, and current and potential contractors.

HHSC procurement personnel are required to complete "HHS Ethics Training for Contracting and Procurement Personnel"<sup>4</sup>.

Final determination of which agency staff must complete the HHS Ethics Computer-Based Training (CBT) is the responsibility of the agency's commissioner, or designee.

Staff required to take the HHS Ethics CBT, at a minimum, are staff with:

- Procurement and contract approval authority, including executive management, financial and legal staff;
- Procurement responsibilities, including bid/proposal evaluators;
- Contract management and monitoring responsibilities;
- Contract oversight and support responsibilities;
- Those with discretion to select services and/or providers for clients (e.g., case workers);
- Staff for whom the HHS Ethics CBT is required must take the training every two years. Staff designated by their agency must take the HHS Ethics CBT within four months of notification to supervisors of the CBT's availability, and every two years thereafter;
- New employees, including inter-agency transfers, involved with the contracting lifecycle are required to complete the HHS Ethics CBT within 60 days of their employment start dates;
- For intra-agency transfers, the supervisor is responsible for determining if the new job duties support the employee's completion of training within 60 days of entry into the new position. As an alternative, the transferring employee can provide documentation that the training was completed within the preceding two years.

## **2.11 Conflict of Interest**

### **2.11.1 Acceptance of Gifts by Contract Staff**

[Texas Penal Code Section 36.08](#), in part, prohibits a public servant's acceptance of a benefit from a person the public servant knows or should know is subject to his or her agency's regulation, inspection, or investigation. The solicitation or acceptance of a benefit from a person or entity a public servant knows or should know is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the public servant's exercise of discretion is also prohibited.

The Section applies even in the absence of any agreement between the donor and the recipient to take or withhold official action.

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<sup>4</sup> HHS Circular C-031 HHS Ethics Training For Contracting And Procurement Personnel

Per [Texas Penal Code Section 36.01](#) "Benefit" is defined as anything reasonably regarded as pecuniary gain or pecuniary advantage, including a benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

PCS does not allow its staff to accept anything, whether of significant or minimal value, from contractors and prospective contractors. A contractor or potential contractor must not offer, give, or agree to give an employee anything of value.

### **2.11.2 Potential Contractors Conflict of Interest**

To avoid conflicts of interest, all HHS agencies should require all potential contractors to disclose, in their solicitation responses, any actual or potential conflicts of interest in their proposed provision of services or other performance under any contracts resulting from the solicitations. Respondents should also be required to update that information throughout the terms of any contracts resulting from the solicitations.

Per [Texas Government Code §2252.901](#) agencies may not enter into employment, professional services, or consulting services contracts with former or retired employees before the first anniversary of the last date on which the individual was employed by the agency if appropriated funds are used to make payments under the contract.

Agencies should also require respondents to:

- Represent and warrant that their provision of services or other performance under the agreement will not constitute an actual or potential conflict of interest and/or that it will not reasonably create even the appearance of impropriety;
- Disclose any current or former employees of the state;
- Disclose any proposed personnel who are related to any current or former employees of the state;
- Represent and warrant that they have not given, nor intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant or employee or representative of the State of Texas in connection with the solicitation;
- Contractors should not be allowed to assign any portion of the contract or their performance, to others, for example, subcontractors, without the prior written consent of the agency.
- Contractors remain responsible for the performance of the contract notwithstanding any such assignment or subcontract. This ensures that the evaluated and selected entity will actually be responsible for performance and that proposed transactions may be reviewed for compliance with the conflict of interest and related party provisions.

When soliciting and contracting for the services of financial advisors, agencies should comply with [Chapter 2263, Texas Government Code](#), regarding conflict of interest and related party provisions applicable to those financial advisors. Financial advisors or service providers must disclose in writing to the administrative head of the state governmental entity and the SAO the following.

(1) any relationship the financial advisor or service provider has with any party to a transaction with the state governmental entity, other than a relationship necessary to the investment or funds management services that the financial advisor or service provider performs for the state government entity, if a reasonable person could expect the relationship to diminish the financial advisor's or service provider's independence of judgment in the performance of the person's responsibilities to the state governmental entity; and

(2) all direct or indirect pecuniary interests the financial advisor or service provider has in any party to a transaction with the state governmental entity, if the transaction is connected with any financial advice or service the financial advisor or service provider provides to the entity or member, in connection with the management or investment of state funds.

The state statute further provides that:



- Financial Advisor or Service Provider shall disclose a relationship (described above), without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship;
- Financial Advisor or Service Provider must file an annual statement with the administrative head of the governmental entity and with SAO disclosing the relationships outlined above;
- If no relationship existed during the disclosure period, annual statement must state this fact affirmatively;
- Annual statement must be filed no later than April 15th (for the previous calendar year period) on a form prescribed by the entity.

In addition to the above, some agencies have special conflict of interest provisions that apply to their employees.

### **2.11.3 Violation of Conflict of Interest**

When an actual or potential violation of any of these standards is discovered, the employee involved must promptly file a written statement concerning the matter with an appropriate supervisor. The person may also request written instructions and disposition of the matter.

If an actual violation occurs or is not disclosed and remedied, the employee involved may be reprimanded, suspended, or dismissed. The vendor or potential vendor may be barred from receiving future contracts and/or have an existing contract canceled.

State purchasing professionals are to discuss ethics issues with their supervisors and the Office of General Council before obtaining advisory opinions from the Ethics Commission.

### **2.11.4 Disclosure of Relationship by Purchasing Personnel**

Per [Government Code §2262.004](#), before a state agency may award a major contract for the purchase of goods or services to a business entity, each of the state agency's purchasing personnel working on the contract must: 1) disclose in writing to the administrative head of the state agency any relationship the purchasing personnel is aware about that the employee has with an employee, a partner, a major stockholder, a paid consultant with a contract with the business entity the value of which exceeds \$25,000; 2) and complete and send to the "administrative head of the agency" a State Auditor's Office form, [Disclosure Statement for Purchasing Personnel](#).

If a contract will have a value of at least \$1,000,000, the Disclosure Statement for Purchasing Personnel must be completed prior to the award of the contract. All staff must complete the form if they will make a decision on behalf of the state agency or makes recommendations regarding:

- The contract's terms or conditions;
- Who the contract will be awarded to;
- Preparation of the solicitation; and/or,
- Evaluation of the bid or proposal.

Purchasing personnel must disclose whether they directly or indirectly own or control more than a 10 percent interest or pecuniary interest with a value exceeding \$25,000 with the business under consideration for award, or have a relationship with:

- An employee/partner;
- A major stockholder;
- A paid consultant with a contract of at least \$25,000 with the business entity under consideration for an award; and/or
- Other owner of the business entity that is related as set forth below:



### **Affinity (Kinship by Marriage)**

1 <sup>st</sup> Degree	Spouse, spouse's child, spouses mother or father, child's spouse, parent's spouse
2 <sup>nd</sup> Degree	Spouse's brother or sister, spouse's grandparent, spouse's grandchild, brother or sister's spouse, grandparent's spouse, grandchild's spouse.

**Note:** Death or divorce ends the affinity relationship, unless a child of the marriage is living.

### **Consanguinity (Kinship by Blood)**

1 <sup>st</sup> Degree	Mother, father, son, daughter.
2 <sup>nd</sup> Degree	Brother, sister, grandparent, grandchild
3 <sup>rd</sup> Degree	Great-grandparent, uncle (brother of parent), aunt (sister of parent), nephew (son of brother or sister), niece (daughter of brother or sister).

**Note:** An adopted child is considered a child of the adopted parent.

An HHS agency requesting a contract for at least \$1,000,000 is responsible for completing a form for the purchase activities conducted by its staff and forwarding it to the HHS agency commissioner for review and signature, acknowledging receipt of the form.

Once approved, the form is forwarded to the Executive Commissioner for signature and acknowledgment of receipt. The purchaser of record maintains a copy of the PCS and HHS agency's form(s) in the procurement file.

#### **2.11.5 Misuse of State Information**

When non-public information is known because of employment, [Texas Penal Code §39.06](#) makes it illegal for a public servant to use the information for private gain. Violation of this provision is a third degree felony. The information may not be used to:

- Acquire or aid another to acquire a pecuniary interest in any property; transaction, or enterprise that may be affected by the information; and/or,
- Speculate<sup>5</sup> or aid another to speculate on the basis of the information.

#### **2.11.6 Records Tampering**

Under [Texas Penal Code §37.10](#), it's an offense for any person, including a state employee, to:

- Knowingly make a false entry in, or false alteration of, a government record;
- Make, present or use any record or document with the knowledge that it is false and with the intent that it be taken as a governmental record;
- Intentionally destroy, conceal, remove, or otherwise impair a governmental record (unless the destruction is authorized by law); and/or,

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<sup>5</sup> "Speculate" means to make a risky financial investment on the basis of information supplied in violation of this law with the hope or expectation that the transaction will result in a substantial profit.

- Possess, sell, or offer to sell a governmental record or blank governmental record form with knowledge that it was obtained unlawfully or with intent that it be used unlawfully.

Violation may be punished from Class A misdemeanor to second degree felony, depending on the violator's intent and type of record involved.

#### **2.11.7 Staying within the Law**

If state officials or employees violate state law, they become individually liable for their actions and may be sued. State appeals courts have ruled as follows:

*“An entity or person whose rights have been violated by the unlawful act of a State official may bring suit to remedy the violation or prevent its occurrence, and such suit is not a suit against the State requiring legislative or statutory authorization. . . . In other words, an officer who ventures into an ultra vires act steps beyond the State’s inviolable mantel, and becomes individually subject to corrective measures. An officer, who acts within the State’s laws, stays within that pavilion of immunity.” (Court of Appeals, Eighth District of Texas, Case No. 08-88-0095-CV, October 21, 1988)*

This means state employment does not protect an employee from personal liability, if the employee does not follow the law and policies.

## Section 3: Procurement and Contracting Services

### 3.1 Roles and Responsibilities of PCS

PCS conducts procurement activities for HHS agencies, resulting in a purchase order, contract, or other agreement for the requesting agency. Following the procurement process, HHS agency staff are responsible for subsequent contract management and monitoring activities. In general, HHS agencies conduct the following activities and should consult or coordinate with PCS staff as needed:

- Assess purchasing needs, plan and develop requisitions.
- Determine specific agency/program requirements.
- Develop specifications, statement of work and scope of work.
- Provide subject matter expertise when needed to facilitate the purchase.
- Obtain agency approvals to procure services or goods before purchase is made.
- Submit a Purchase Request Form (PRF) to the PCS requisition Mailbox before purchase is made.
- Prepare far enough in advance for the purchaser and the vendor to do their jobs properly, including:
  - seeking delegation as needed
  - obtaining legal review and/or Contract Advisory Team review
  - HUB determination
  - advertising for bids
  - obtaining bids or price quotations
  - processing bids
  - placing purchase orders or concluding contracts, and
  - allowing delivery of goods or service.

The HHS agency should designate the contract manager and provide this information on the requisition, who will be responsible for oversight of the contract and serve as a single point of contact. The HHS Agency also maintains the contract file.

The PCS Purchaser will conduct the following activities to assist HHS Agency staff with the procurement:

- Send a courtesy email to the end user within 2 business days of requisition assignment.
- Assist the agency with the development of specifications/statement of work, as needed.
- Review and determine the purchasing method that will provide the best value for the State.
- Lead procurement kick off meetings.
- Train the evaluation team.
- Lead vendor conference.
- Facilitate negotiations as appropriate.
- Develop the solicitation document.
- Develop and route any Action Memos for approvals.
- Procure and finalize purchases with a purchase order, contract, or procurement card.
- Administer protests and debriefings with input from HHS Agency program SME.
- Maintain procurement records.
- Review requested changes to existing purchase orders/contracts.
- Make any required changes to an existing purchase.
- Send copy of purchase order and/or contract to all identified on the requisition.

### 3.1.1 Customer Service Team (CST)

PCS Customer Service Team is the liaison between the HHS Agency and the Sourcing Team (Purchasers). CST will assist with procurement issues and concerns. CST is also responsible for researching, tracking and responding to procurement issues from requestors. Purchase Order Adjustment request by agencies are also sent to the CST for review and processing

Status inquiries and change requests should be sent directly to the purchaser assigned to your order. If the response is inadequate or no response is received from the purchaser, then contact CST for assistance. Email inquiries directly to the PCS CST Mailbox: [PCS\\_CST\\_HHSC@hhsc.state.tx](mailto:PCS_CST_HHSC@hhsc.state.tx). The PCS Customer Service phone number is: 512.206.5500.

Should the HHS agency require assistance to develop and plan a purchase, the agency may request assistance from PCS CST.

### 3.1.2 PCS Requisition Processing Performance Standards

Notification E-mail – When the approved requisition is assigned, the purchaser will send an email informing the end user that they will be processing their purchase.

**Estimated PCS Process Timeline**

Type Purchase	Dollar Amount	Purchased By	Estimated Time
Any Type	\$5,000 and Less	PCS	5 business days
Any Type	\$5,000.01 to \$25,000	PCS	15 business days
Commodities (Goods)	over \$25,000	PCS	180 days
Commodities (Goods)	over \$25,000	CPA/TPASS	180 days
Services	\$25,000.01 to \$100,000	PCS	8 weeks to 6 months, depending upon complexity
Services	Over \$100,000	CPA/TPASS	45 business days CPA/TPASS Open Market If delegated to PCS: 60 business days
RFP	Over \$100,000	PCS	8 weeks to 12 months, depending on complexity
Emergencies	Over \$5,000	PCS	1 – 3 business days

## Section 4: Beginning The Procurement Cycle

### 4.1 Pre-Solicitation Requirements

Pre-solicitation activities are the planning, development, and approval processes that occur prior to carrying out purchase activities.

### 4.2 State of Texas Statutory Requirements

#### 4.2.1 Major Contracts (\$10,000,000 or more)

Pursuant to [Texas Government Code Section 2262.101](#), the Contract Advisory Team (CAT) was created to assist state agencies in improving contract management practices by reviewing and making recommendations on solicitation documents and contract documents for contracts that have a value of at least \$10 million during the original term of the contract, not including any renewal periods.

All HHS procurements must be reviewed by CAT using the automated Contract Advisory Team Review and Delegation (CATRAD) application form. The CAT will review the solicitation documents from a contract management and best practices perspective. In the course of the review, the CAT provides recommendations, identifies risks and offers risk mitigations/strategies within 20 business days of receipt. If PCS does not receive a response from the CAT within 20 business days of initial receipt of the solicitation documents, PCS may proceed with the issuance of its solicitation.

The HHS Agency/Program must comply with the CAT recommendations or submit a written explanation of why the recommendations are not applicable to the contract under review. PCS will coordinate with the Agency/Program Lead and their respective Legal Division to draft the written responses for any recommendations that are not applicable.

The Purchaser will submit the written responses to CAT on PCS 143 CAT Recommendations/Agency Explanations Form.

PCS and the HHS agency must consider the CAT review period into the procurement schedule to avoid potential delays.

#### 4.2.2 Major Information Resources Project

##### 4.2.3.1 Definition

"Any information resources technology project identified in a state agency's biannual operating plan whose development costs exceed \$1 million and that:

- Requires one year or longer to reach operations status;
- Involves more than one state agency;
- Substantially alters work methods of state agency personnel or the delivery of services to clients; and/or,
- Any information resources technology project designated by the Legislature in the General Appropriations Act as a major information resources project.<sup>6</sup>

##### 4.2.3.2 Approval of a Major Information Resources Project

According to [Texas Government Code §2054.118](#), a major information resources project must be approved according to Department of Information Resources rules and guidelines.

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<sup>6</sup> See Government Code §2054.003 (10)

The Health and Human Services Executive Commissioner is responsible for performing information systems planning and management for HHS Agencies. [HHS Circular C-009 Enterprise Information Technology Governance Policy](#), establishes information systems planning mechanisms, including governance councils and other coordination groups to ensure compliance.

HHS agencies must provide evidence of proper approval with the requisition. PCS purchasers ensure the procurement file contains documentation that Enterprise IT has approved the project.

#### **4.2.3.3 Assistance in determining if a project is “a Major Information Resources Project”**

HHS agency programs and divisions should consult with IT in situations where assistance may be needed to determine whether a procurement and contract must comply with certain state and HHS Enterprise IT requirements.

### **4.2.3 New Vehicles/Accepting Donated Vehicles**

HHS agencies must coordinate purchases of vehicles or acceptance of donated vehicles through the Enterprise Fleet Management Office (EFMO). There are no exceptions. Vehicle replacements are allowed on a one-for-one basis; the only exception is if prior approval has been requested through the agency's administration, EFMO, and ultimately the Comptroller's Office of Vehicle Fleet Management (OVFM), resulting in OVFM approval to change the agencies approved fleet size.

#### **4.2.4.1 Purchase of Vehicle(s)**

1. If an agency determines there is a need to purchase a vehicle, the agency's fleet manager is contacted and provided details to support the request, as well as to determine if the new vehicle will be an addition to the fleet (requires additional approvals within agency and from the Comptroller's Office of Vehicle Fleet Management) or a replacement vehicle. The fleet manager will then contact EFMO to discuss the intended purchase **before** any pre-requisition forms (PRF), requisitions, or purchase orders are initiated.
2. Once EFMO has determined that the vehicle(s) will be purchased, EFMO will work with the agency fleet manager and appropriate program staff to determine the exact vehicle configuration needed and will then develop detailed specifications and pricing for the vehicle(s). Note that if HHS agency staff request to purchase a vehicle that does not meet standard specifications, or if this main vehicle is not available, any purchase of a 2<sup>nd</sup> choice vehicle will be put on hold while additional documentation is provided to TPASS for approval.
3. Once EFMO has developed the pricing and specifications, the information will be provided to the agency fleet manager or other designated staff for submission with other required documentation to begin the purchasing process.

#### **4.2.4.2 Accepting Donated Vehicles**

If an HHS agency has a facility or program that has an opportunity to receive a donated vehicle, vehicles can only be replaced or accepted on a one-for-one basis; therefore, the agency's fleet manager must be contacted **prior** to accepting any vehicle being donated. The agency fleet manager will then:

1. Gather details concerning the vehicle being donated and will contact EFMO to assist the fleet manager in evaluating whether acceptance of the donated vehicle is feasible.
2. If the agency fleet manager and EFMO agree that the vehicle is of value and will be of benefit, the agency fleet manager will work with the facility or program receiving the vehicle to identify an existing vehicle to be taken out of service in order to receive the donated vehicle.

3. If the donated vehicle is accepted, the agency fleet manager will then coordinate putting the vehicle into service by adding the donated vehicle into the Texas Fleet System, placing the vehicle being replaced by the donated vehicle into a pending sale status, obtaining title and registration, and assisting with or handling agency property transfers/changes.

#### **4.2.4 Purchase of Insurance**

The State Office of Risk Management (SORM) must pre-approve any proposed insurance purchase. The PCS purchaser is responsible for submitting form [SORM-201](#) for pre-approval.

This does not include the purchase of services that require the contractor to carry standard liability, auto, and worker's compensation insurance.

#### **4.2.5 Purchase of Private Auditor Services**

An HHS agency, coordinating with its internal audit staff, must obtain approval from the state auditor prior to contracting for the services of a private auditor (see [Texas Government Code §321.020 \(a\)](#)).

The HHS agency follows the State Auditor's Office (SAO) process at the following link:  
[http://www.sao.state.tx.us/apps/ear/\(S\(xbjugm55zljwsv55k5ifwsrr\)\)/default.aspx](http://www.sao.state.tx.us/apps/ear/(S(xbjugm55zljwsv55k5ifwsrr))/default.aspx)

A letter of prior approval or other form of notice of delegation from the State Auditor must be submitted with the requisition to PCS for the purchase of private auditor services.

Services of a private auditor include:

- Financial audit,
- Compliance audit,
- Economy and efficiency audit,
- Effectiveness audit,
- Special audit, and
- Investigative audit

All audit services fall into one or more of these categories.

#### **4.2.6 Purchase of Outside Legal Counsel**

[Texas Government Code §402.0212](#) requires that a contract for legal services between a private attorney and a state agency must have prior approval from the AG. The HHS agency's Office of General Counsel coordinates the hiring of outside legal counsel and works with the AG to obtain the required approval. A letter of prior approval or another form of notice from the AG must be submitted with the requisition to PCS for the purchase of outside legal counsel

Note: The services of a hearing examiner, administrative law judge, or other quasi-judicial officer are not considered legal services.

#### **4.2.7 Federal Approval Requirements**

When entering contracts related to federally funded projects, related to the development of automated information systems, prior approval is required from the federal funding source. HHS agencies should review federal grant award requirements and follow guidance provided by the funding source. Coordination of requests for federal approval may include coordination through state oversight offices such as the Governor's Budget, Planning and Policy Division and the Department of Information Resources. Consult with the Office of General Counsel to determine if coordination is required through these offices.

It is the requesting agency's responsibility to determine whether federal approval is needed. If approval is required, a copy of the federal approval will be attached to the requisition. PCS will include a copy of the federal approval in the procurement file.

#### **4.2.8 Centers for Medicare and Medicaid Services (CMS) Approval**

The Centers for Medicare and Medicaid Services (CMS) must approve certain types of Medicaid contracts. The general requirements applicable to state Medicaid contracts are found in 45 Code of Federal Regulations (CFR) Part 74 and the State Medicaid Manual §2080. In most cases, contracts may be awarded without prior federal approval. There are two exceptions as follows.

1. Contracts for Automated Data Processing (ADP) and Fiscal Agents.

45 CFR §95.611 requires agencies to obtain prior written approval from the Department of Health and Human Services (HHS) for ADP equipment or services in which the total estimated federal and state funding for the acquisition equals:

- \$5,000,000 or more for the total acquisition, or
- \$1,000,000 or more and the equipment/services are acquired noncompetitively.

The requirement also applies to procurement of fiscal agents whose primary function is to provide mechanized claims processing, information retrieval systems, and/or the ADP services required to operate such systems.

2. Contracts for Design, Development, Installation and/or Improvement of Medicaid Management Information Systems (MMIS)

Prior written approval is required when enhanced funding (greater than 50% federal match) is requested subject to financial thresholds. CMS has provided an exemption letter permitting the State of Texas to use the normal administrative rate threshold of \$1,000,000 found at 45 CFR 95.611(b)(1)(iv) for total MMIS project costs that are claimed at either a 50/50 FFP match rate or the 75/25 FFP match rate, but all requests for a 90/10 FFP match rate must receive prior approval.

If prior written approval has been received on a project, Advance Planning Document Updates (APD-Us) must be submitted under the following conditions as outlined in 45 CFR 95.611(c):

- Regular FFP (both competitive and non-competitive):
  - Total project cost increase of \$1,000,000 or greater
  - A timeline extension of 60 days or more
  - A change in procurement methodology
  - A change in project concept/scope
  - A change in cost allocation methodologies
- Enhanced FFP (both competitive and non-competitive):
  - Total project cost increase of \$300,000 or 10 percent of project costs (whichever is less)
  - A change in schedule of 60 days or more
  - A change in procurement methodology
  - A change in project concept/scope
  - A change in cost allocation methodologies

#### **4.2.9 Historically Underutilized Business (HUB) Requirements**

A HUB:

- Is a business formed for the purpose of making a profit,
- Is at least 51% owned by one or more Asian Pacific Americans, Black Americans, Hispanic Americans, Native Americans, American women, and/or Service Disabled Veterans,
- Is an entity with its principal place of business in Texas, and
- Has an owner residing in Texas with a proportionate interest that actively participates in the control, operations and management of the entity's affairs.



The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in an effort to remedy disparity in state procurement and contracting in accordance with the HUB goals specified in [The State of Texas Disparity Study](#). State agencies shall make a good faith effort to utilize HUBs in contracts for construction, services (including professional and consulting services) and commodities purchases. In accordance with [Texas Administrative Code \(TAC\) Title 34, Part 1, Chapter 20, Subchapter B §20.13](#), each state agency shall make a good faith effort to assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year in accordance with the following percentages:

- 11.2% for heavy construction other than building contracts;
- 21.1% for all building construction, including general contractors and operative builders contracts;
- 32.9% for all special trade construction contracts;
- 23.7% for professional services contracts;
- 26.0% for all other services contracts; and
- 21.1% for commodities contracts.

HHS agencies make a good faith effort to meet or exceed these goals by contracting directly with HUBs or indirectly through subcontracting opportunities.

For small purchases (\$5,000 or less excluding IT purchases) competition is not required; however, PCS does require contact with at least one HUB vendor to provide them with an opportunity to quote.

In accordance with [Texas Government Code \(TGC\) §2161.252](#) and the [Texas Administrative Code \(TAC\) Title 34, Part 1, Chapter 20, Subchapter B §20.14](#), each state agency as defined by TGC §2151.002 that considers entering into a contract with an expected value of \$100,000 or more over the life of the contract (including any renewals), shall, before the agency solicits bids, proposals, offers or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. If subcontracting opportunities are probable, each state agency's invitation for bids or other purchase solicitation documents with an expected value of \$100,000 or more shall state that probability and require a [HUB Subcontracting Plan \(HSP\)](#).

When an HSP is required, all respondents (HUB and Non-HUB prime vendors) **must** include a HUB Subcontracting Plan (HSP) with their solicitation response. An HSP is required whether the respondent intends to subcontract or not. If the solicitation response does not contain an HSP or contains an HSP that the agency determines was not developed in good faith, the response shall be rejected as a material failure to comply with advertised specifications.

[The Statewide HUB Program](#) facilitates the use of HUBs in state procurement, provides HUBs with information on the state's procurement process, and certifies qualified minority, women and veteran owned businesses as HUBs. Vendors seeking certification as a HUB are required to submit a completed HUB certification application and supporting documentation to CPA, affirming under penalty of perjury that their business qualifies as a HUB.

For more information about the HUB program, the Comptroller's Office has produced an ["Introduction to the Statewide HUB Program" video](#).

### 4.3 Planning and Development of the Requisition

#### 4.3.1 Planning Process

HHS agencies follow their own processes to plan and develop purchase requests and enter requisitions into HHSAS. Agency internal planning and development processes should include, at minimum, the following:

- **Need**, including purpose, timing, geographic area covered, size of award(s) and target population, outcomes and outputs, risk-based resource allocation, applicable penalties/sanctions/recoupment of administrative loss and such;
- **Authority**, including right to purchase, funding authority, and funding availability, program and executive signoff;
- **Type award**, including determining whether grant/sub-recipient or vendor, client service or administrative, specialized contract requirements, risk assessment strategies, and such;
- **High profile**, including political sensitivity, significant policy impact, large expenditure including major consultant contracts (over \$15,000) and major contracts (of \$1,000,000 or more), or other instances of special interest and impact upon the purchase.

#### 4.3.1.1 Purchases Equal to Greater Than \$25,000

If the purchase is equal to or greater than \$25,000 for the initial contract term, the requesting agency must:

Document the purpose and description for the purchase/procurement by completing PCS 146, "Procurement Initiation/Approval to Post Form".

<http://hhscx.hhsc.state.tx.us/Admin/purch/forms.shtml>

Approval must be provided by the requesting agency's signature authority. PCS will approve or deny the request. The HHS Agency must also sign PCS 146 to approve posting to the ESD and HHSC's Business Opportunities website. PCS will approve or deny the request.

The purchaser must include the fully approved form in the procurement file.

This process does not apply to Proprietary/Sole Source or Emergency Procurements.

#### 4.3.2 Requisition Requirements

Certain information is vital to the processing of a requisition. Some information is always required; some is required for particular types of purchases. Required information expedites handling of the requisition. The following table addresses those types of information.

Item	Discussion
<b>Description of Purchase (Required Specifications)</b>  (see below for more detailed information on specifications)	<p>The requesting agency must provide a detailed description of the good or service, not a training course number, or SKU. A description contains information describing who, what, where, when and how (what is it, what does it look like, how does it function, how is the service performed, what are the expected outputs and outcomes, what are the standards that must be met).</p> <p>There is a 250-character limit for the description. If more space is required, place additional information in the requisition line comments or attach a separate document with the full description. If the description needs to be discussed with the purchaser, include a note in the header comments, including who to contact and how to contact them.</p> <p><b>Note:</b> If known from previous purchases, include the vendor's name and telephone number, previous contract or purchase order number, and the eleven digit CPA commodity code(s) of the requested good(s) or service(s).</p>
<b>Additional descriptive information</b>	<p>Such as:</p> <ul style="list-style-type: none"> <li>• Vendor's brochures or specification sheets</li> <li>• Commodity Code, if known</li> <li>• Suggested vendor information</li> </ul>

	<ul style="list-style-type: none"> <li>• Inside delivery address</li> <li>• Special delivery instructions</li> <li>• Non-binding quote <sup>7</sup></li> </ul>
<b>Client or Administrative Purchase</b>	<p>If the purchase is a client service, it must be identified as a client service purchase in the requisition's header comments. Otherwise, PCS assumes the purchase is administrative.</p> <p><b>Client Service Contracts</b> provide goods and/or services that are for the benefit of an agency's clients and are for the purpose of carrying out one or more of the agency's programs.</p> <p><b>Open Enrollment Contracts</b> provide goods and/or services that are for the benefit of an agency's clients and are for the purpose of carrying out one or more of the agency's programs. PCS Purchasers are responsible for taking the lead in developing the enrollment with agency program(s) and will post the enrollment on the Electronic Business Dailey (ESBD). PCS Purchasers must function as the sole point of contact for questions regarding the open enrollment while it is posted. The Contract Manager serves as sole point of contact once the application moves to a Contract.</p> <p><b>Administrative Contracts</b> provide goods and/or services for direct consumption of use by the agency in the day-to-day support of the agency's administrative operations.</p> <p><b>Mixed Contracts</b> contain both client services and administrative services. The contract's primary purpose (over 50%) determines the type of contract. Client service and administrative purchases must not be combined to change the contract's primary purpose. If there is a question about the primary purpose of a contract, contact one of the Managers of PCS.</p>
<b>End User or Requester</b>	<p>To expedite processing of the requisition, include the name, phone and fax number, and email address of the person(s) who can provide additional information about the purchase request. The information should be placed in the requisition's header comments.</p> <p>Requester is the person entering the requisition into HHSAS  End User is the person identifying and initiating the purchase request and is also known as the super user or contact person. This staff will be the agency lead subject matter expert for Enrollment and RFP solicitations and will be responsible for coordinating between PCS and the agency during the solicitation process.</p> <p>Note: PCS Purchaser will send a copy of the executed Purchaser Order and/or Contract to all staff identified in the header comments.</p>
<b>Contract Manager</b>	Identify staff that will manage the contract after award. PCS Purchaser will send a copy of the executed PO and/or Contract to staff identified.
<b>Bill to Address and Bill to Code</b>	<p>The following items are required:</p> <ul style="list-style-type: none"> <li>• Bill to code in requisition's header comments section (HHSAS standard comment)</li> <li>• Ship to code on requisition line</li> <li>• Location code (internal delivery code) in comments section (HHSAS standard comment)</li> </ul>
<b>Vendor Information</b>	For purchases using existing Purchase Orders and Blanket Contracts, vendor name

<sup>7</sup> End users may request a quote from a vendor in order to get a price for budget planning. The agency must inform the vendor that such bids are being obtained for budgetary purposes only and the official bid will be conducted by PCS. Submission of bids obtained by end users does not relieve PCS from the responsibility of bidding the requirement. PCS will handle all official solicitations for procurements they process. In no case should an end user indicate to the vendor that they have been awarded the purchase.

	<p>and vendor ID number <u>must</u> be entered on the requisition to assure proper and timely handling. (See “Purchase against Existing Purchase Order/Blanket Contracts in this table below).</p> <p>For replication of previous purchases or purchases in which a possible vendor is known, possible vendors <u>may</u> be suggested. PCS cannot commit to use suggested vendors, but if possible, they will be given an opportunity to bid.</p> <p>For both type situations, vendor information can be placed in either the requisition’s line or header comments. Include, to the extent possible, the vendor’s name, phone number, fax number, ID number and address.</p>
<b>Purchase against Existing Purchase Orders/Blanket Contracts</b>	<p>To assure purchases are not duplicated or awards made to the wrong vendor, the following information must be provided in the requisition’s comments section:</p> <ul style="list-style-type: none"> <li>• The previous requisition number tied to the purchase order or blanket contract</li> <li>• The blanket contract number</li> <li>• If known, the renewal option</li> <li>• The associated contract’s purchase order number</li> <li>• The name of the existing purchase order/blanket contract’s purchaser</li> </ul> <p>Note: The name is needed to assist with researching. A different purchaser may be assigned to fulfill the requisition. The last purchase order or blanket contract is a good resource for the information.</p>
<b>Renewals and Amendments</b>	<p>For renewals and amendments:</p> <ul style="list-style-type: none"> <li>• When submitting a requisition for the renewal of a contract include last year’s contract and purchase order number</li> <li>• When submitting a requisition for contract amendments include the contract or purchase order number. All amendments to a contract must be within the scope <b>of the original contract</b></li> </ul>
<b>Reserved Purchase Order (P.O.) Number</b>	<p>If a purchase order number has been reserved for the purchase, include the reserved P.O. number in the requisition’s header comments. Include the name and phone number of the person who reserved the number.</p>
<b>Associated Documents</b>	<p>If there are attachments associated with a requisition, note the names and number of attachments in the requisition’s header comment field and how they will be sent to PCS (as an attachment to the requisition or by fax or email).</p> <p>Attachments can be attached to the requisition in HHSAS, e-mailed, faxed, mailed, or hand delivered. If attachments are not associated with the requisition in HHSAS, they must have the requisition number prominently displayed at the top of the attachment.</p> <p>Examples of Associated Documents: forms, detailed specifications or scope of work, Governor’s finding of fact, special terms and conditions, unique requirements applicable to the purchase (such as federal regulations, statute, and rules), Texas Register postings, required forms, etc.</p>
<b>Inside Delivery Address</b>	<p>Enter in the requisition’s header comments the final destination for the good or service (that is, where the good or service will be delivered by the vendor). Include the address and room number, as well as the name and telephone number of the person receiving the purchase.</p>
<b>Emergency Purchase<sup>8</sup></b>	<p>An emergency is a situation requiring the state agency to make the procurement as quickly as possible to prevent a hazard to life, health, safety, welfare, or property or</p>

<sup>8</sup> End user should indicate emergency, urgent or expedite in the header comments of the requisition and RIT will alert the sourcing team. End users can also email the CST box and they will expedite the processes of the requisition.

<b>(see Section 5.3.5)</b>	<p>to avoid undue additional cost to the state. An emergency purchase must be identified as such in the requisition's header comments.</p> <p>If the purchase is an emergency, the requesting agency must indicate in the requisition header comments that the purchase is an emergency and notify CST by e-mail about the emergency purchase. Include in the e-mail the following information: the requisition number, why the situation is an emergency, what the purchase is, when it is needed, and who can be contacted to discuss the purchase.</p> <p>Form <a href="http://hhscx.hhsc.state.tx.us/admin/purch/forms.shtml">HHS-PCS.01 Justification for Emergency Purchase</a> must be completed and accompany emergency purchases of \$5,000 or more. <a href="http://hhscx.hhsc.state.tx.us/admin/purch/forms.shtml">http://hhscx.hhsc.state.tx.us/admin/purch/forms.shtml</a></p>
<b>Proprietary or Sole Source Purchase (see Section 5.3.4)</b>	<p>A proprietary product or service is manufactured or offered under exclusive rights of ownership, including rights under patent, copyright, or trade secret law. A product or service is proprietary if it has a distinctive feature or characteristic which is not shared or provided by competing or similar products or services.</p> <p>A sole source purchase is a purchase that is directed to a specific vendor, even though the goods and services may be available from other vendors. A sole source procurement must be directed to a single vendor for a valid reason.</p> <p>A proprietary or sole source purchase must be identified as such in the requisition's header comments.</p> <p>Form <a href="http://hhscx.hhsc.state.tx.us/admin/purch/forms.shtml">HHS-PCS.02 Justification for Proprietary/Sole Source Procurement</a> must be completed and accompany proprietary or sole source requisitions for purchases of \$5,000 or more. <a href="http://hhscx.hhsc.state.tx.us/admin/purch/forms.shtml">http://hhscx.hhsc.state.tx.us/admin/purch/forms.shtml</a></p>

When the PCS Requisition Intake Team (RIT) receives a requisition, the Team reviews it, and assigns **completed and approved** requisitions, including associated documentation, to the correct PCS sourcing team. PCS will assign an approved requisition to a sourcing team, based on class/item, within four hours of receiving it. Note: A completed requisition is one that is approved and budget checked in HHSAS.

The Sourcing Team Manager then assigns the requisitions to a PCS Purchaser within **1 business day** of receiving requisition from RIT. The PCS Purchaser will then:

- send a courtesy email to the end user within **2 business days** of requisition assignment; and
- analyze the requisition to determine the required purchasing method and ensure best value to the State.

HHS Agencies may contact PCS Customer Service if they have not heard from a purchaser in a reasonable amount of time, but should first determine that the requisition was actually approved. Customer Service phone number: 512.206.5500 or email [PCS\\_CST\\_HHSC@hhsc.state.tx](mailto:PCS_CST_HHSC@hhsc.state.tx)

PCS Level One staff will perform the following purchase order adjustments:

- PO closeout
- PO line closeout or cancellation
- Transfer of funds from one PO distribution line to another PO distribution line, Change of accounting information, funding source, or object code

#### 4.3.2.1 Associated Documents

The end user is responsible for associating e approval of documents to the requisition when sending the requisition to PCS.

#### **4.3.2.2 Specifications**

A specification is a description of a product or service a user seeks to procure and is a description of what a bidder must offer to be considered for an award. Specifications are the primary means of communication between an agency and a vendor.

Specifications control:

- the quality level of the product;
- the amount of competition;
- the suitability of the product or service for the job to be done; and
- the method of evaluation used in making an award and in determining the best value bid for the purchase.

The requester, with PCS assistance if required, must develop acceptable specifications covering the agency's needs.

These specifications should:

- provide a clear and accurate description of the requirements for the merchandise or service to be purchased;
- be clear and understandable to the bidders;
- permit competition between products of equal quality;
- include a statement regarding the qualitative nature of the purchase; and,
- identify minimum essential characteristics and standards to which the purchase must conform if it is to satisfy its intended use.

#### **4.3.2.3 Characteristics of an effective specification**

- **SIMPLE:** Avoid unnecessary detail, but be complete enough to ensure that requirements will satisfy their intended purpose.
- **CLEAR:** Use terminology that is understandable to the agency and bidders. Use correct spelling and appropriate sentence structure to eliminate confusion. Avoid legalese type language and jargon whenever possible.
- **ACCURATE:** Use units of measure that is compatible with industry standards. All quantities and packing requirements should be clearly identified.
- **COMPETITIVE:** Identify at least two commercially available brands, makes, or models (whenever possible) that will satisfy the intended purpose. Avoid unneeded "extras" that could reduce or eliminate competition and increase costs.
- **FLEXIBLE:** Avoid very inflexible specifications, which prevent the acceptance of a bid that could offer greater performance for fewer dollars. Use approximate values such as dimensions, weight, speed, etc. (whenever possible) if they will satisfy the intended purpose. If approximate dimensions are used, it should be within a 10% rule of thumb unless otherwise stated in IFB.
- **RESULTS:** For services, use results or outcome-based specifications. Rather than prescribing how a service should be performed, describe the intended result and require the vendors to detail how they will achieve the result.

A bidder or contractor may provide free technical assistance to an agency, but a bidder or contractor cannot write the specification. This is because it may give them an unfair advantage.

A state agency may not accept a bid or award a contract to a vendor who received compensation from the agency to participate in the preparation of the specifications or request for proposals on which the bid or contract is based. A bidder or contractor who provided technical assistance to

the specification or request for proposal will not be allowed to submit a bid nor considered for a contract or subcontract.

#### **4.4 What information to include for a commodity purchase**

- Manufacturer, model and part number, if known (this will be used as an example, it will not necessarily be the item which is awarded);
- How the item will be used;
- Item performance requirements;
- Size, shape, color;
- When is the item required (Delivery date) (Note: standard delivery time is 2-4 weeks after the order is placed); and
- For software purchases, the version #, if an upgrade the version # that will be upgraded, and if a user license then the number of users.

#### **4.5 What information to include for a service purchase**

- Description of the services to be provided (Statement of Work (SOW));
- Hours service is required, if applicable;
- Overtime statement (will overtime be paid or not) , if applicable;
- Resumes outlining experience and qualifications, if applicable;
- Identification of personnel requirements, (i.e. supervisor, guard, worker, etc.), if applicable;
- Timeline for the delivery of services (begin/end date);
- Location for services; and
- Any special requirements or qualifications for the service provider.

**Note:** If the services will be needed on a regular basis, the buyer may be able to establish a blanket contract with options to renew which can cover the need for an extended period of time. This is documented in the comments section on the requisition.

#### **4.6 “After the Fact” Purchases**

An “After the Fact” purchase is defined as a requisition that is not justified as an emergency purchase but dated after the receipt or order date of the requested goods and/or services or after an agency has awarded the purchase/contract. The requisition must state that the “PO is for payment purposes only”, that the purchase has been order and/or received. This alerts the Purchaser to not purchase the item. “Confirmation PO ONLY”.

It is the policy of PCS that non-emergency requisitions received after the purchase has been completed will be processed as an “after-the-fact” purchase and a purchase order will be issued in order for the vendor to receive payment.

“After the Fact” purchases are recognized as inappropriate procurement actions and reported monthly to each agency COO and/or executive management. The documentation of the “after the fact” purchase and the issuance of a purchase order allows both the vendor to be paid in a timely manner and directs attention to the inappropriate purchase at the Executive level. PCS meets monthly with the agency Chief Operating Officers and provides monthly SPEAR (Sole Source Proprietary Emergency After the Fact Report) at these meetings.

PCS fulfills a monitoring and training function by both documenting the purchase as “after-the-fact” and advising HHS staff of the incorrect procedure followed and which procedures should be followed in the future to prevent policy violations.

#### **4.7 State and Federal Debarment**

Purchasers must verify that the awarded contractor is not excluded from doing business with the state or federal government. Purchasers must check the state Debarred Vendor List and the System of Award Management (SAM) and include this documentation in the procurement file.

### **Debarred Vendor List**

The Debarred Vendor List includes the names of vendors debarred from doing business with the State of Texas, effective from the date of debarment for the length of time indicated. This list is located on the CPA's website at: [http://www.window.state.tx.us/procurement/prog/vendor\\_performance/debarred/](http://www.window.state.tx.us/procurement/prog/vendor_performance/debarred/).

### **Printing Documentation for Procurement and Contract File**

It is recommended to click 'printable list' when printing for the file.

### **System of Award Management (SAM) and the Excluded Parties List System (EPLS) Search Information**

Searches for exclusions for award and renewal purposes should be processed through the [System for Award Management \(SAM\)](#). Exclusion records identify those parties excluded from: receiving federal contracts, certain subcontracts, certain types of federal financial and non-financial assistance and benefits. These are also commonly known as "suspensions" and "debarments."

#### **Quick Tips for EPLS [Search Records](#):**

- Enter the Dun and Bradstreet Data Universal Numbering System (DUNS) number, company or individual name in the search field. It is recommended that the DUNS number, if known, be utilized for a specific company or sole proprietor to obtain the optimal search results. SAM does not have DUNS numbers for all firms listed; therefore, an additional name search should be performed.
- The search results will reflect "Has Active Exclusion?" with a "Yes or No" answer format. The entity does not have an active exclusion submitted in SAM by a federal agency if the answer is "No." Utilize the "Save PDF" to print for the file.
- If "Yes," an exclusion record is found, it will display in a box marked "Exclusion" in purple. Check the status in the top-right corner of the box. If the status indicates "Active," there is an active exclusion for that entity.

### **Printing Documentation for Procurement or Contract File**

It is recommended to use the "Save PDF" option for printing or saving purposes. This format contains a date and time stamp which is required for audit purposes. Use caution utilizing the "Print" function as it does not provide a time stamp and the local printer must have the date stamp feature active for printing on the document for audit purposes.



### Section 5: Types of Purchases

#### 5.1 Special Purchases

##### 5.1.1 Texas Council on Purchasing from Persons with Disabilities (TCCPD)

TCCPD is not a state agency. The council's purpose is to encourage and assist disabled persons to achieve maximum personal independence by engaging in useful and productive activities. Commodity items and services offered in the Texas Industries for the Blind & Handicapped (TIBH) catalogue are reviewed and approved by the TCCPD.

The program requires state agencies to purchase products made by and services performed by persons with disabilities unless they do not meet the agency's needs. Purchases of services, approved by the Texas TCCPD, from the [TIBH](#) catalogue do not require competitive bidding. Purchaser should insert on the purchase order the following: "TIBH set-aside contract, exempt from competitive bidding per [Texas Government Code Section 2155.138](#)." (See Section 6: Agency Reporting Requirements for TIBH reporting requirements).

If a product or service is approved, it is set aside from competitive bidding and included on a Texas Comptroller of Public Accounts (CPA) term contract.

##### 5.1.1.2 Temporary Staffing Services

HHS has an established contract with Texas Industries for Blind & Handicapped (TIBH) for purchasing temporary staffing services. TIBH contracts with additional temporary staffing agencies. As a result, the location of the requestor will determine which TIBH temporary staffing agency will be used to obtain the requested temporary staffing services. If the area of the requestor has multiple contracted TIBH temporary staffing agencies, the first temporary staffing agency assigned to the requesting HHS agency will be contacted. If the first contacted temporary staffing agency cannot fill the needed staff position, they will issue a waiver allowing PCS to send the temporary staffing request to the second listed temporary staffing agency. If neither agency can fill the position, the request will go out to open market.

TIBH may determine the job description doesn't meet the referenced class and/or bill rate shown on the request provided, so TIBH may request a change in the requested temp's class or bill rate to fill the position. Agencies are notified of the requested change. The requesting HHS agencies may approve the change. If so, the requisition may need to be changed and reapproved or the number of hours lowered and the bill rate changed to equal the requisition total.

##### Requesting Temporary Staffing Services:

When submitting a requisition for temporary staffing services, the below listed information needs to be provided as required in the Temp Services REQ Requirement Form that is completed by the assigned PCS purchaser.

- Job Class#
- Job Class Title
- Rate (Entry Level, Experienced, Expert)
- Job Description
- Knowledge, Skills, and Abilities
- Work Hours (AM/PM)
- Work Days (Mon-Fri)
- Work Hours per Week

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- Start Date / End Date
- Department Name
- Department Address
- Supervisor Name
- Supervisor Phone Number
- Additional Contact Name
- Additional Contact Phone Number
- Name of Temp (if known)
- Texas Region

Note: Throughout the procurement process, the assigned PCS purchaser will serve as the point of contact between the contracted temporary staffing agency and agency requesting service. If you do not know your assigned PCS purchase, please reference Section 3.1.1 - Customer Service Team.

### **5.1.2 Texas Department of Criminal Justice (TDCJ)/Texas Correctional Industries (TCI) Prison Made Goods Act**

#### **5.1.2.1 Competitive bidding required for printing services**

Under the Prison Made Good Acts, competitive bidding is not required for products/services purchased from TCI, except for printing. When assessing bid responses for their Competitive Bid/Open Market Purchase for printing services, PCS must provide TCI a final opportunity to negotiate on price, if they submitted a response to the Print Shop Job Request Form. If TCI provides a final price in response to the PCS request and the agency wishes to make an alternate selection, PCS must submit electronic copies of the bid tabulation to the TPASS Procurement Manager and responses from the solicitation process for certification prior to award.

PCS should be aware that state statute requires agencies to utilize TCI if they can provide the requested service and if they submit the lowest price in a best and final request. PCS initiates the purchase by:

- Requesting a written quotation from TCI;
- If the quotation is within PCS's delegated purchasing limits, the agency issues a purchase order directly to the TCI. The following is noted on the purchasing documentation "the award was made under the Prison Made Goods Act and is noncompetitive." Code as a Document Type 9 when a warrant must be issued or Interagency Transaction Voucher (ITV) to electronically transfer payment; or,
- If the quotation exceeds the agency's delegated purchasing limits, send an open market requisition to CPA with the quotation attached.

### **5.1.3 Council on Competitive Government Contracts (CCG)**

[Texas Government Code 2162](#) authorizes the CCG to identify, study, and determine if a service performed by one or more state agencies may be better provided under contract. New service contracts are awarded throughout the year. Agencies are mandated to use CCG awarded contracts. Check the [CCG website](#) for a listing of all current contracts.

Current CCG contracts include:

- Document destruction services;

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- Digital imaging;
- Presort/barcode mailing services;
- Retail fuel card;
- Computer Assisted Legal and Investigative Research (CALIR) Services;
- Energy Procurement;
- Geographic Information Services; and
- Specialty Paper and Supplies

### 5.2 Purchases under Comptroller of Public Accounts (CPA) authority (common goods and services)

#### 5.2.1 Non-Delegated Purchases

##### 5.2.1.1 CPA Term Contract Purchases

The Comptroller of Public Accounts (CPA) establishes term contracts by commodity/service codes as a supply source for all state agencies. Contracts are based on estimated quantities, specified by the CPA, and may be ordered as needed.

CPA term contracts are required to be used for administrative purchases unless:

- The item on contract does not meet the agency's needs;
- The quantity to be purchased is less than the spot purchase exemption amount;
- The term contract does not represent best value; or
- The delivery time on the term contract does not meet the delivery need.

If the CPA contract is not used the requesting agency must include the reason why the item does not meet the need in the procurement file.

When a requisition is received the Purchaser is responsible for:

- Reviewing the specifications to determine if the item is available from a CPA Term Contract [http://www.window.state.tx.us/procurement/cat\\_page/](http://www.window.state.tx.us/procurement/cat_page/).
- If the Purchaser finds an item or items on contract that are similar to the items ordered and appear to meet the agency's need, they will ask the end-user to consider the contract item(s).
- If the item(s) will meet the agency's need, the Purchaser will use the CPA online purchasing system or [TxSmartBuy](#) to complete the purchase order.
- If the item(s) will not meet the agency's need, the Purchaser will ask for justification from the end-user and purchase the item(s) under another procurement method.

Agencies are required to utilize the term contracts unless they fail to meet their needs. In such a case, the justification should be documented on the agency's purchase order and in the procurement file.

##### 5.2.1.2 CPA Administrated Open Market Purchase

###### 5.2.1.2.1 Goods That Exceed \$25,000

Purchases of administrative goods exceeding \$25,000 are not delegated to the agency. The agency reviews, edits, and completes the requester's specifications or scope of work draft documents then sends the open market requisition to CPA for solicitation. The average CPA processing time for an open market requisition is 45 calendar days; this may vary depending on the nature of the purchase.

The appropriate CPA Purchaser reviews the requisition and communicates any suggested changes to the agency within approximately 14 days of receipt of the requisition. CPA will work

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with PCS to resolve discrepancies, suggestions and/or changes before advertising and awarding the purchase.

### 5.2.1.2.2 Services that Exceed \$100,000

Purchases of services with an estimated purchase price of \$100,000 or more are under the authority of CPA. The agency reviews, edits, and completes the requester's scope of work draft documents and when finished sends the open market requisition to CPA for solicitation or delegation via the CPA Web Portal. The CPA Purchaser determines if there will be a competitive advantage to CPA administering the competitive process or not. CPA will either delegate the authority to make the purchase back to the agency or they will advertise the solicitation as an open market. If CPA delegates the open market service purchase to the agency, the purchaser will follow appropriate purchasing procedures to complete the purchase.

### 5.2.1.2.3 Texas Multiple Award Schedule Contracts (TXMAS)

CPA has established, as an alternative purchasing method, the use of multiple award schedule contracts that have been competitively awarded by the federal government or any other governmental entity of any state. The prices on TXMAS contracts are the most favored customer prices, but purchasers may seek to negotiate lower pricing. Agencies are not required to use these contracts. TXMAS contracts are available at <http://portal.cpa.state.tx.us/txmas/>

#### Texas multiple award schedule (TXMAS) process

Prior to purchasing from a TXMAS contract, the purchaser must first determine if the requested goods or services are available from preferred sources, in this order:

- TCCPD
- TIBH
- TCI
- DIR term contracts (Information Systems goods and services only)
- CPA term contracts

If an appropriate product or service is not found from any of these sources, the purchaser may make a best value purchase from a TXMAS contract.

#### Procedures

The purchaser reviews the TXMAS contracts to see if the product or service is available with pricing shown. These contracts may be viewed at: <http://portal.cpa.state.tx.us/txmas/>.

If the product or service is available on a TXMAS contract, the purchaser contacts the TXMAS contractors to negotiate pricing and special configuration or technological requirements.

If more than one contract contains the product or service, the purchaser obtains and evaluates quotes to make a best value determination.

A purchaser may negotiate with a TXMAS vendor on the price of:

- Incidental, non-TXMAS contract items and services
- Installations or inside deliveries and set ups of equipment
- Goods and services that the vendor is offering through a promotional program
- Goods and services in an amount that exceeds the contract's maximum

### 5.2.1.2.4 Delivery Based Information Technology Services

Delivery Based Information Technology Services (DBITS) contracts are available under eight different information technology categories of DIR GO-DIRECT contracts. A specific or series of deliverables are described and performed under the contract and upon completion and acceptance, the contract is over. DIR has satisfied the HUB Sub-Contracting and required procurement vendor certifications (Debarment, Child Support, Non-Disclosure, etc.), and Contract Advisory Team (CAT) as part of the DBITS contract process. Some of the limitations for DBITS contracts are:

- The value of any one SOW may not exceed \$10 million including all extensions, renewals and change orders.
- The vendor may only provide services in their awarded Technology Categories.

The DBITS categories and a brief description of the sequence of events of a DBITS procurement are listed below.

#### I. DBITS Categories:

The Agency determines if there is an appropriate DBITS Category for their project and if so, develops the Statement of Work.

- Application Development
- Application Maintenance and Support
- Business Intelligence (BI) and Data Warehouse
- Enterprise Resource Planning (ERP)
- Information Technology Assessments and Planning
- Project Management
- Service Oriented Architecture (SOA)
- Technology Upgrade/Migration and Transformation

Each contract consists of four components noted below that include the Contract between DIR and the vendor, Terms and Conditions, HUB Subcontracting Plan and a sample Statement of Work (SOW) used for developing the SOW. See an example below:

- Contract [DIR-SDD-950](#) expires 03/08/2011 (55 KB)
- [ACS Appendix A](#), Standard Terms and Conditions (167 KB)
- [ACS Appendix B](#), HUB Subcontracting Plan (118 KB)
- [Appendix C](#), Statement of Work (56 KB)

#### II. How to Order:

1. Once the appropriate DBITS Category is selected, the Agency completes a Statement of Work (SOW) in the format as provided in Appendix C of each DIR DBITS Contract. A sample SOW with the PCS cover page is located at the end of this document. The SOW format includes:
  - a. The HHS standard SOW Coversheet.
  - b. The SOW template which includes the below minimum suggested items:
    - i. Scope of Work
    - ii. Project Risks, Assumptions & Constraints
    - iii. Roles & Responsibilities
    - iv. Detailed description of Deliverables
    - v. Acceptance criteria, including testing or period of review
    - vi. Project completion criteria

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- vii. Project schedules to be achieved by vendor
  - viii. Relevant quality processes
- 2. PCS and related Agency Divisions (other users, Legal, Budget, etc.) should work together to produce a concise SOW. In addition to the SOW the Division will need to enter zero dollar Requisition into HHSAS to ensure the approvals and funding are in place. A DBITS procurement typically is completed in 45 days once the SOW is released to selected DIR vendors.
- 3. DIR strongly recommends that the SOW be sent to at least three (3) vendors that offer the Technology Category requested, however, PCS recommends sending the SOW to three to five vendors. If the Agency Division does not provide suggested vendors, all vendors in the requested Technology Category will be solicited. This helps accomplish the goal of obtaining best value since the DBITS Categories are fairly general in nature and not all the vendors will be capable of responding and the chances of having the best proposals (rather it read responses) increase if all vendors are solicited.
- 4. Once PCS has sent the SOW to the selected categories' vendors, questions and clarifications may be requested from the vendors to insure there is no missing information or vagueness. Vendor conference or presentation may be held.
- 5. PCS will received the DBITS SOW responses and facilitate the evaluations with an objective evaluation tool. The evaluation tool must be submitted to PCS for approval prior to release of responses for evaluation. PCS is responsible for tabulating evaluation scores. The Agency Division is responsible for selecting evaluation team member.
- 6. PCS and the Agency Division may negotiate the response pricing and the terms and conditions (as so long as they don't conflict with or weaken the terms of the DIR contract).
- 7. The vendor may begin work ONLY after receiving the SOW signed by authorized Agency and Vendor representatives and the Purchase Order.

### 5.3 Delegated Purchases

#### 5.3.1 Commodity Purchases under \$25K

A commodity purchase is a procurement of supplies, materials, or equipment and does not include the purchase of real property or services. CPA delegates to all state agencies the authority to purchase commodities whose estimated purchase price does not exceed \$25,000.

#### 5.3.2 Service Purchases under \$100K

A service is defined as the furnishing of skilled or unskilled labor or professional work. CPA delegates to all state agencies the authority to purchase commodities whose estimated purchase price does not exceed \$100,000. Delegated purchases of services do not include:

- Professional and consulting services covered by the Professional Services Act as defined by Texas Government Code, Title 10, Subtitle D, Section 2254;
- Services of an employee of a state agency;
- Services of public utilities; or
- Services for clients.

For Open Enrollment, PCS Purchasers are responsible for taking the lead in developing the enrollment with agency program(s) and will post the enrollment on the Electronic Business Dailey (ESBD). PCS Purchasers must function as the sole point of contact for the open enrollment while it is posted.

#### 5.3.3 Professional and Consulting Services

[Texas Government Code Section 2254](#) specifically empowers governmental entities to purchase professional services and consulting services. These procurements are exempt from Comptroller of Public Accounts (CPA) review authority. Each agency is responsible for following procurement

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requirements and resolving any complaints or protests. CPA recommends agencies consult their legal counsel for guidance in procuring professional or consulting services.

### 5.3.3.1 Professional Services

Professional services must be within the scope of practice as defined by [Texas Government Code Section 2254.002](#) or provided in connection with the professional employment or practice of a person who is licensed or registered as:

- Certified Public Accountant (CPA)
- Professional Engineer
- Architect
- Landscape Architect
- Land Surveyor
- Physician, including a Surgeon
- Registered Nurse
- Optometrist
- Real Estate Appraiser

For information on purchasing services provided by private legal counsel, contact the Office of the Attorney General.

(See Section 6: Reporting and Notification)

### 5.3.3.2 Consultant Services

[Texas Government Code 2254](#) defines a consultant service as the human service of studying or advising an agency under a contract that does not involve the traditional relationship of employer and employee. An agency may contract with a private consultant only if:

- There is a substantial need for the service; and
- The agency cannot adequately perform the service with its own personnel or through another agency.

If the consulting service is reasonably foreseen to exceed \$15,000 during the term of the contract, the agency shall submit a notice of intent to the LBB and the Governor's Budget and Planning Office and obtain a finding from the Governor's office that the services are necessary. Thirty days before entering into such a contract, an invitation for offers from consultants must be published in the Texas Register. These requirements do not apply to the acquisition of certain services such as those provided by private legal counsel, investment counselors, actuaries, medical or dental services, and professional services listed under the Professional Services Procurement Act. Not later than the 20th day after entering into a consulting services contract with a value expected to exceed \$15,000 a description of the services, the name, and value of the contract must be published in the Texas Register.

### 5.3.3.2.1 Staff Augmentation Purchase

Staff Augmentation is contracted directly through Texas Department of Information Resources (DIR). HHS Agencies coordinate through DIR their request for IT staffing using the IT Staffing Request Form posted on the DIR website. DIR provides the HHS Agencies with a pool of a resumes for their review and selection. When a selection is made, HHS Agencies work directly with the vendor to negotiate the price using the "not to exceed" criteria listed in the DIR contract. When a candidate is selected, a requisition is sent to PCS for issue of a purchase order.

For additional information on procuring staff augmentation services, please [click here](#).

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**Note:** If the professional or consulting service contract is anticipated to exceed \$25,000, a notice or the entire solicitation must also be posted on the Electronic State Business Daily (ESBD). (See Section 6: Reporting and Notification)

### 5.3.3.2.2 Consulting Services Relating to Information Technology (IT)

The following commodity class and item codes are identified as catalog purchases:

Class 918-28 Computer Hardware Consulting;

- Class 918-29 Computer Software Consulting;
- Class 918-30 Computer Network Consulting;
- Class 918-46 Feasibility Studies;
- Class 918-90 Strategic Technology Planning and Consulting Services; and
- Class 918-95 Telecommunications Consulting.

New commodity class and items may be added by CPA as they are identified. [Click here](#) for a list of applicable class and item codes.



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### 5.3.4 Sole Source/Proprietary Purchases

A proprietary product is one where the specifications or conditions of the proposed purchase allows only one product to be supplied, and preclude any other product or supplier from meeting the specifications. When the specification limits consideration to one product or supplier, you must include a written Proprietary Purchase Justification in the procurement file.

Proprietary justification is not needed for purchases of \$5,000 or less. If the estimated purchase price is \$5,000 or less, there are no special requirements for a proprietary purchase. Follow the instructions in Section 2.4, Selecting a Procurement Method.

Proprietary purchases may be considered as sole source or competitive.

**Sole Source:** Product or service is only available for purchase through the specific identified vendor. These vendors are usually the manufacturer.

**Competitive:** Specific products which are available for purchase through multiple dealers or distributors for the manufacturer or owner of the services.

The memorandum to file must include:

- A letter of justification that describes the need for the proprietary specification or scope of work.
- Documentation to support the exemptions from competitive bidding requirements (i.e. warranty paperwork; documentation/statement from the vendor identifying them as the sole source for the product **or service**). **Supporting documentation is required.**
- The reason competing products or services are not suitable.
- Any other applicable information requested by TPASS to further explain the justification.
- [Section 656.044 Texas Government Code](#) allows for an agency to use funds to provide training and education for staff as long as the training or education is related to the duties or prospective duties of the employee; therefore, a Sole Source Purchase Justification is not required.

Examples of such purchases include, but are not limited to the following:

- Artistic or public speaking services that are unique to a specific individual, group of individuals, or performing group.
- Membership dues paid in accordance with the General Appropriations Act or other governing law.
- Extensions of service contracts required to allow completion of previously contracted services, where the delay in completion of the contract is due to circumstances beyond the control of the contractor such as an unforeseen change in applicable state or federal law or a discretionary decision by the purchasing entity to delay a contracted service.

#### 5.3.4.1 Justifying an Sole Source/Proprietary Purchases

A proprietary justification is not needed for purchases of \$5,000 or less. If the estimated purchase price is \$5000 or less, there are no special requirements for a sole source/proprietary purchase. End-user must indicate whether the purchase is a sole source or proprietary in the requisition comment's section.

The purchase of publications or software that is available solely from the publisher is NOT a Proprietary purchase; this is a Direct Publication purchase.

If the purchase is greater than \$5,000, HHS agencies must complete form [HHS-PCS.02 Justification for Proprietary/Sole Source Procurement](#)

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HHS Agency/Program must attach documentation to support an exemption from competitive bidding requirements (i.e. warranty paperwork, documentation/statement from the vendor identifying them as the sole source for the product or service) must be attached. **Supporting documentation is required.**

HHS-PCS.02 Justification for Proprietary/Sole Source Procurement must provide all required approvals from the agency commissioner(s) or commissioner designee(s). Delegation of authority to approve proprietary and sole source purchases is located at the following link: <http://hhscx.hhsc.state.tx.us/Admin/purch/SignatureAuthority.shtml>

The PCS Deputy Executive Commissioner must approve the justification. Signature and print name are required.

Purchaser must attach PCS.142 Internal Routing Form. All documentation to support this justification should be attached.

All proprietary purchases over \$25,000 will be posted to the Electronic State Business Daily (ESBD) for a minimum of 14 days.

### 5.3.5 Emergency Purchases

#### 5.3.5.1 Definition of an Emergency

Emergencies occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat.

If a situation arises in which compliance with normal procurement practice is impracticable or contrary to the public interest an emergency purchase may be warranted to prevent a hazard to life, health, safety, welfare, property or to avoid undue additional cost to the state.

Emergency purchases must not exceed the scope or duration of the emergency. For example, the current contractor walks off the job and services are needed immediately and on an on-going basis for the remainder of the year. The emergency solicitation should only cover the immediate need for the period of time (shortest timeframe possible, not to exceed one year without approval of the PCS Associate Commissioner) that it will take to competitively bid out the services for the remainder of the year.

Emergency purchasing procedures are applicable to all types of procurements. Despite the existence of an emergency, the purchaser must use his/her best efforts to conduct the procurement with as much competition as is practical under the circumstances. See "Emergency Purchases" in §2.12 of CPA's Procurement Manual: <http://www.CPA.state.tx.us/stpurch/2-18.html>

#### 5.3.5.2 Justifying an Emergency

The HHS Agency completes Form [HHS-PCS.01 Justification for Emergency Purchase](#)

The HHS Agency attaches supporting documentation that contains sufficient justification (i. e. life safety code reviews, building code renovations; and corrective action plan, to meet the criteria for an emergency exemption from competitive bidding requirements. **Supporting documentation is required.**

HHS-PCS.02 Justification for Proprietary/Sole Source Procurement obtains all required approvals from the agency commissioner(s) or commissioner designee(s). Agency delegation of authority to

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approve emergency purchases is located at the following link:<http://hhscx.hhsc.state.tx.us/Admin/purch/SignatureAuthority.shtml>

The PCS Deputy Executive Commissioner must approve the justification. Signature and printed name are required.

Once signed, the [HHS-PCS.01 Justification for Emergency Purchase](#) form is forwarded to PCS as an attachment to the HHSAS requisition.

### 5.3.5.3 Declaring an Emergency

The agency requesting the purchase must immediately contact the CST within PCS. CST discusses the emergency and provides technical assistance. If necessary, CST will forward to appropriate sourcing team and request a reserved PO number be issued in HHSAS.

The agency must submit the requisition with the emergency purchase standard comment and the justification form to PCS. The agency shall include the "EMERGENCY PURCHASE" statement in the comment's section. This is an HHSAS standard comment.

The agency shall include in the requisition comment a contact name, number and email address of the person that will be providing assigned purchaser with information necessary to complete the purchase.

The purchaser will forward the justification to the PCS Associate Commissioner. Purchaser must attach PCS.142 Internal Routing Form. The PCS Associate Commissioner reviews the justification and purchase requirements to ensure the justification meets legal requirements and does not exceed the scope or duration of the emergency. The PCS Associate Commissioner approves the Emergency by signing the form and printing name.

If the justification is questioned, or more information is needed, the PCS Associate Commissioner communicates those questions to the purchaser or to the agency requesting the purchase.

Once the HHS-PCS.01 Justification for Emergency Purchase has been approved by both the Agency and the PCS Associate Commissioner, the purchaser will complete the purchase.

If time permits, the purchaser will solicit informal bids from at least three (3) Certified Master Bidders List (CMBL) vendors no matter the dollar amount. Informal bids may be taken by phone, fax, or e-mail.

The purchaser will make the award based on best value, considering delivery timeframes, and the type of emergency. A description of the vendor selection process will be included in the procurement file. If the award is \$25,000 or more the purchaser will post the award on the ESBD.

### 5.3.5.4 Critical Emergency

If there is a critical emergency, such as a fire or broken water main that demands immediate attention, there may be no time to process Form HHS-PCS.01 or obtain HHSAS requisition approvals.

If an emergency purchase must be made prior to submitting Form HHS-PCS.01, the description on the requisition must describe the critical nature of the emergency and why the purchase had to be made before submitting the form.

If the agency does not submit the form before the purchase is completed, the purchase must be approved in writing by the PCS Associate Commissioner if during work hours and if available. The documentation on the requisition must describe the critical nature of the emergency. The

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agency must provide the approved form as soon as reasonably possible. The purchaser must include the fully approved form in the procurement file.

### **5.3.5.5 Disasters**

The PCS Associate Commissioner has the authority to suspend internal purchasing procedures in the case of a declared disaster. In such case, the PCS Associate Commissioner notifies CPA that PCS is operating under a declared disaster and requests temporary suspension of signature requirements.

### **5.3.6 Direct Publications**

Direct Publications are publications only available from the publisher (a single source).

Examples of direct publications include, but are not limited to:

- Subscriptions only available directly from the publisher
- Foreign publications
- Back issues of magazines, journals, and newspapers
- Publications produced by professional societies
- Audio, visual or audiovisual materials (films, audio presentations, etc.) that is only available directly from the publisher
- Computer software and software maintenance which is only available directly from the publisher
- Electronic data service directly from the publisher (not to be confused with internet service providers such as EarthLink or America On-line, which are not direct publications).
- Collections of any of the foregoing items, including microfilm or microfiche copies of the collection.

Any publication not purchased from the publisher that could be purchased using a competitive process is not considered a direct publication. For example, publications that are available through subscription services are not direct publications.

Include the information that the publication is only available from the publisher on the requisition. The PCS purchaser can then place the order without competition.

### **5.3.7 Internal Repairs**

An internal repair is a repair to state-owned equipment that cannot be reasonably defined prior to the actual repair and the extent of which cannot be determined until the equipment is disassembled. Internal repairs must contain labor and may include parts.

For example, the unexpected failure of a building's air conditioner may result in unanticipated repair to electrical circuitry, which would constitute an internal repair.

Competitive award is not required; however, the purchaser should obtain quotes sufficient to determine best value. At a minimum, the following should be obtained:

- Cost to diagnose the equipment and determine what is needed for repair
- Hourly rate of repair service
- Vendor response time to complete the repair

### **5.3.8 Distributor Purchases**

A distributor purchase is the purchase of repair parts for a unit of major equipment that is needed immediately or as maintenance contracts for laboratory/medical equipment. Examples of major equipment include, but are not limited to, the following:

- Motor vehicles

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- Farm tractors and equipment
- Road building machinery and equipment
- Heavy construction machinery and equipment
- Traffic signal lights or traffic signal controller equipment
- Intelligent Transportation Systems (ITS)
- Laboratory or medical equipment
- Industrial Manufacturing Machinery

Repair parts do not include complete components such as engines, transmissions, compressors, etc. Parts purchased on a distributor purchase order can only be purchased from a dealer or distributor of the unit being repaired. However, when a unit of equipment has a major component made by another manufacturer, such as a Ford truck using a Caterpillar engine, the component repair parts can be purchased from a dealer or distributor of the component being repaired. Verify that the installation of distributor parts will not void the equipment's warranty before proceeding with this type of procurement.

The following items are not distributor purchases:

- Parts available on CPA Term Contract.
- Consumable items such as brake pads, air filters, etc.
- Labor of any kind.
- Non-Original Equipment Manufacturer (OEM) parts, i.e. after market items.
- Major component replacements.
- Parts for stock.
- Electrical parts for electric motors, electrical switch panel boards, or electrical accessories, etc.

### 5.3.9 Procurements with Special Requirements or Restrictions

#### 5.3.9.1 Promotional Items

Agencies must take the following into consideration when determining when it is acceptable to use appropriated funds to purchase promotional items; A state agency has implied statutory authority, as an incident to its regulatory functions, to inform the public about those functions.

Before appropriated funds can be used to purchase promotional items, the following must be determined and documented:

- How the items are directly linked to the program and serve to inform the public about the program; and
- Whether authority exists within the program's funding source to purchase those items.

The requisition must include a business justification and the appropriate authority for the purchase.

#### 5.3.9.2 Memberships to Organizations

A membership is a relationship with a professional organization that requires dues. For a request for a membership to be approved, at least one of the following criteria must be met:

- Membership provides access to current topical information, that is, laws, regulations, or research, which are relevant to the employee's work and which would not otherwise be available to the department in a timely manner.
- Membership provides reduced fees for information, training seminars, or other educational materials for the employee or department in a timely manner.

Reasons for membership are that it:

- Gains public support for the department's mission or publicize the activities of the department in a timely manner;

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- Provides the agency information regarding new approaches to providing more efficient and effective methods of service delivery;
- Is necessary for an agency employee to perform his or her job duties, or
- Assists in the recruitment and retention of qualified employees.

### 5.3.9.2.a Professional Membership

Pursuant to TAC Rule 391.109, may be for an agency's employee or for the agency, but significant benefit must accrue to the agency making the purchase. The purchase requires completion of Form HHS-PCS .003 Justification for Purchase of Professional Membership, [HHS-PCS.02 Justification for Proprietary/Sole Source Procurement](#) and obtain commissioner or designee's signature of approval.

### 5.3.9.2.b Non-Professional Membership

Membership in a private entity offering goods or services at a discounted rate (e.g. Sam's Club, Costco) may be purchased only if the agency:

- Shows that the cost of the goods or services plus the membership fee is less than the cost of purchasing the goods or services elsewhere;
- Documents how the payment relates to the statutory duties of the agency.

The purchase requires completion of Form [HHS-PCS.04 Justification for the Purchase of Non-Professional Membership, and](#) commissioner or designee's signature of approval.

### 5.3.9.2.c Notary license fees and bond fees

A state agency may pay a notary license fee or notary bond fee for an employee of the agency if providing notary services is part of the employee's official duties.

HHS agencies must retain in its files documentation that states the employee for whom the notary license fees or notary bond fees are paid provides notary services as part of the employee's official duties. Upon request, the agency must make the documentation available to the CPA during or for a post-payment audit.

### 5.3.9.2.d Lobbying and Political Organizations

If an organization pays all or part of a lobbyist's salary, the General Appropriations Act does not allow state funds to be used to pay for membership in the organization.

Each request for membership payment must include a written statement from the agency requesting membership acknowledging that it does not pay all or part of a lobbyist's salary. This statement is included in the justification forms.

### 5.3.9.2.e Chambers of Commerce

State funds cannot be used to pay a membership fee to a Chamber of Commerce. It is acceptable to contract with a Chamber of Commerce to provide specific services if the department has specific or implied statutory authority for the contract. If the request form is approved, the purchase order must list the specific services the Chamber of Commerce is to provide.

### 5.3.9.3 Purchase of HHS Printing Service Policy

Agency personnel should submit all print requests to the HHS Print Shop first, via email or the [online print order form \(D-8\)](#). HHS Print Shop will determine if the print job can be completed in house. If the

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determination is made that the request cannot be completed by the HHS Print Shop, the contacts will instruct the agency personnel to proceed with entering their request into the CCG Portal.

### **Print and Print-related Service Procurements Exceeding \$1,000 in Estimated Purchase Price**

Requests for print and print-related service procurements exceeding \$1,000 in estimated purchase price must follow the procedures outlined below. It is a violation of this procedure to intentionally divide job request for the purpose of avoiding these procedures.

### **Requesting a Print Shop Review**

HHS personnel should determine their print job specifications and estimated purchase price for their print job. Estimates may be received from State Print Shops or other entities directly without utilizing this process, but estimates received will not be considered formal bids for procurement purposes.

The initiating HHS personnel should provide details of their needs, including:

- Department name and department identification number
- Description of the needed printing, including quantities, type stock, special assembly instructions, and other relevant information, and
- Required delivery date.

To submit specifications to the State Print Shops for bid, HHS personnel must complete the Print Shop Job Request Form located on the CCG Website <https://www.window.state.tx.us/ccg/>. Once completed, click on the submit button on the bottom of the form and the form will be routed to the contacts at each of the State Print Shops. Once submitted, the HHS personnel completing the form will need to print or save a copy of the results page for their records.

The Print Shop Job Request Form provides the HHS personnel with an opportunity to enter the "Project Due Date", the "Estimate needed by", and the "Time needed by" fields for their job. State Print Shops that are able to perform the work and respond to the request will reply to CCG by the date and time provided on the form. If no date or time is provided, agencies should expect that State Print Shops will provide responses within 36 hours of submission of the Print Shop Job Request Form.

Upon completing a Bid Request, initiating agency requester should email to David Bennett at [David.bennett@cpa.state.tx.us](mailto:David.bennett@cpa.state.tx.us)

### **CCG Actions**

- CCG will receive all bids and compile a Bid Tabulation for the job, then email the Bid Tabulation with all of the bids to the HHS personnel requesting print services. Generally, this Bid Tabulation will be emailed within 24 hours of receipt of bids by CCG (excluding weekends and holidays).
- If CCG sends job pricing requests to commercial vendors, because of "no bids" by State Print Shops, this will add more days to the final Bid Tabulation delivery. If after submitting the Print Shop Job Request Form online, you have updates or additional information and need to contact ALL of the print shops you must send an email to [state.print.shops@cpa.state.tx.us](mailto:state.print.shops@cpa.state.tx.us) referencing the Job Number that was generated by the Print Job Request Form submission.
- Upon receipt of bid responses from CCG, HHS personnel must perform an analysis of the bids received for documentation in the procurement file. If HHS personnel determine that best value would be achieved through a State or Commercial Print Shop, submit the bid response documentation to PCS via the requisition to request the analysis of the bids and approval prior to procuring the services from the respective print shop. The PCS Purchaser will document the procurement file with the best value determination clearly outlining what evaluation criteria was used.

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- Documentation of this process **must** be maintained in the procurement file to include adequately documenting the evaluation criteria used in establishing best value.
- Once approval is provided by PCS, the HHS personnel should utilize the most appropriate means of procuring the service by utilizing the PCS approved CCG Print Shop.
- If the HHS personnel does not use the CCG recommended vendor, then PCS must document the procurement file with the “Best Value” reasons and email a copy of this documentation to CCG.
- If CCG receive no responsive bids from a State or Commercial Print Shop or, after the results of the bid evaluation performed determine that best value would be achieved through a private sector vendor, then the agency will submit a requisition to PCS who will then perform a Competitive Bid/Open Market Purchase.

Note: Procurements above \$25,000 must be sent to TPASS CPA for review and possible delegation by PCS; those above \$10,000,000 must obtain Contract Advisory Team Review and Delegation (CATRAD) review.

### PCS Actions

- If the required documentation approving the purchase is attached to the requisition, the assigned purchaser determines the appropriate purchasing method and makes the purchases.
- If the documentation from CCG is not attached, the purchaser will contact requester to determine if the CCG review has been completed and if the documentation is available to be forwarded to the purchaser.
- If the CCG review has not been completed, the purchaser places the requisition back into HHSAS workflow by returning it to “open” status. The purchaser will notify the requester of the action and refer them to the instructions for requesting a print shop review in this manual.

### 5.3.9.4 Awards

#### 5.3.9.4.1 Employee Awards

According to [Texas Government Code §2113.201](#), a state agency may purchase service awards, safety awards, or other similar awards to be presented to its employees for professional achievement or outstanding services, provided the purchase not exceed \$100.

#### 5.3.9.4.2 Volunteer Awards

According to [Texas Government Code §2113.202](#), a state agency may purchase engraved certificates, plaques, pins, or other similar awards to be presented to volunteers for special achievement or outstanding service if the agency has established a volunteer program [Texas Government Code §2109](#) or other law. The agency must document the existence of the volunteer program in its requisition. The cost of awards purchased under this section may not exceed \$50 for an individual volunteer.

Requisition forms for employee awards and volunteer recognition must include the specific information, art copy, type of plaque, etc., desired and must include the date due the item(s) is needed.



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### 5.3.9.5 Alcohol and Food

#### 5.3.9.5.1 Alcohol – Constitutional Prohibition

State moneys may not be used to purchase alcohol or alcoholic beverages for personal consumption or entertainment. This prohibition applies regardless of the source for the monies used to purchase the alcohol or beverages. <sup>9</sup>

#### 5.3.9.5.2 Food and Equipment Related to Food Preparation or Storage

The attorney general has said that the Texas constitution prohibits a state agency from purchasing food, coffee, cream, sugar and similar items that employees of or visitors to the agency would consume unless the agency has statutory authority.

Pursuant to [Texas Government Code §2155.144](#), an agency is not delegated the authority to procure common commodities or services, including goods and services acquired for direct consumption or use by the agency in the day-to-day support of the agency's administrative operations, such as office supplies and equipment, building maintenance and cleaning services, or temporary employment services.

The attorney general also has said, however, that a state agency may purchase equipment and supplies related to the preparation or storage. Examples include refrigerators, ranges, sinks, coffee makers, cups, soap and dishtowels.

### 5.3.9.6 Leased Facilities

#### 5.3.9.6.1 Building Leases

The Texas Facilities Commission (TFC) governs the lease of space for state agencies. TFC's authority for its leasing activities is in [Texas Government Code §2167](#).

All requests for lease space by Health and Human Services (HHS) agencies must be submitted by the HHSC Lease Officers under the direction of the HHSC Director of Facility Management and Leasing.

#### 5.3.9.6.2 Repairs to Leased Facilities

All requests for lease space repairs or improvements of leased space by HHS agencies must be submitted by the HHSC Lease Officer under the direction of the HHSC Director of Facility Management and Leasing. Regional Administrative Services (RAS) is responsible for working with the TFC on all repairs and or improvements to state leased facilities.

In accordance with [Texas Government Code §2167](#), The TFC must authorize and approve all payments for repairs and or improvements to leased facilities under the terms of the state lease. If repairs and/or improvements are needed to the facility, Regional Administrative Services (RAS) and TFC will work with the property owner to be sure that they meet their contractual obligations regarding the repairs to leased facilities.

If the state is responsible under the lease for payment for repairs and/or improvements, TFC will work with the lessor to obtain the services needed. HHS Agencies must submit a request through the TFC Facilities Service Center using this website <http://portal.tfc.state.tx.us/fcsm/facilityfrontpage.asp>.

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<sup>9</sup> Sources for this subsection: Texas Constitution Article III, Section 51; Article VIII, Section 3; Article XVI, Section 6(a). *State of Texas Purchase Policies and Procedures Guide 15*

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TFC also approve all invoices submitted by the lessor for services by the lessor or by a service/construction company of their choice. The TFC determines the reasonableness of the charges and approves any payment requests. A [HHS-PCS.02 Justification for Proprietary/Sole Source Procurement](#) is required.

### 5.4 Training/Conference Registrations and obtaining space for Conferences:

#### 5.4.1 Procedure for Training and Conference Registrations

Note: [Section 656.044, Texas Government Code](#) allows for an agency to use funds to provide training and education for staff as long as the training or education is related to the duties or prospective duties of the employee; therefore, a Sole Source Purchase Justification is not required.

**Step 1** - A requester needing to register for training, a conference, or for paying a certification - (or similar types of 'sign-ups') - should FIRST contact the vendor to ensure the vendor will take a Purchase Order (PO) or a procurement card for payment.

If the vendor will take a PO for payment, the requester must submit a purchase request, using a purchase requisition. The requisition must include name of employee, name/title of training /conference, dates, estimated total, vendor, registration information, etc. – well BEFORE the conference or training starts. When submitting a requisition to request a PO, the requester must submit the purchase request prior to the training registration date (recommended 3 weeks prior to training registration date).

If the vendor will take a procurement card for payment, the requester does not need to submit a purchase request, using a purchase requisition. However, the requester must receive agency and/or program approval before using a procurement card to purchase training and conference registrations. Please note if HHS Agency/Program does not have the authority to use their assigned procurement card to complete purchases, the requester will have to submit a purchase request specifying procurement card as method of payment. For additional information on procurement cards, please reference the [HHS Procurement Card Program Policy Manual](#).

Please note procurement card(s) shall NOT be used to pay for training course and seminar registration fees if payment is going to another state agency, an institution of higher education, or IT-related. When payment is provided between state agencies, state agencies must submit interagency payments for goods and services using the Recurring Transaction Index (RTI) process in USAS when funding sources for both agencies are held in the State Treasury.

Each agency can determine and monitor whether a PO or procurement card is used to purchase the requested training registration fee, conference registration fee, or certification payment.

**Step 2** - To ensure that any additional hardcopy and/or electronic registration documents needed by the vendor are submitted to the training/conference vendor, the requesting agency puts a note in the HHSAS comments field of - "ADDITIONAL REGISTRATION DOCS." The documents associated with the requisition are attached and forwarded to the purchaser handling the purchase.

**Step 3** - When the HHSAS requisition is received by PCS, the purchaser may purchase the training using a procurement card or complete a purchase order. If a procurement card is used, the purchaser enters an "A" code in the vendor item ID field and completes the standard header comment "ACT A4". After appropriate comments are added to the requisition, the requisition is cancelled. The purchaser ensures the vendor uses the HHSAS requisition number as its 'order number'. No invoice is needed.

#### **PCS is not involved in the purchase of training in the following circumstances:**

- The agency requesting the purchase determines (by contacting the vendor) that the vendor does not accept purchase orders or procurement card payments,
- The training has already occurred,
- The training has been personally paid for by the employee,

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- There is insufficient time to process a purchase requisition, or
- In such instances, the agency requesting the purchase coordinates arrangements for the training, including payment.

### 5.4.1.1 Conference/meeting Space Requirements

The purchase of meeting and conference space for a HHS agency's use is an administrative purchase.

### 5.4.1.2 Prerequisites for Obtaining Space

According to [Texas Government Code §2113.106](#) prior to arranging for space outside state-owned or leased facilities the agency requesting the purchase must determine that state space is:

- Unavailable when needed;
- Not adequate to accommodate the meeting, conference, or examination; or
- Not an economically favorable alternative to other facilities.

The requesting agency must document at least one of the above criteria by filling out and submitting the [Form HHS-PCS.05, Justification and Specification Form for Hotel/Meeting/Conference Space](#) documentation with the requisition. The purchaser must place the documentation in the procurement file for audit purposes.

### 5.4.1.3 Process for Obtaining Conference or Meeting Room Space

The HHS agency or program requesting the purchase of meeting or conference space determines space rental needs, general location, and the potential cost for the purchase. If HHS agency staff contact vendors for space needs and estimated costs, agency staff should communicate that they are only getting a bid for budget planning purposes.

HHS agency staff should not reserve space or sign contracts or agreements with the hotel or conference location. Non-PCS staff are not authorized to enter into space rental contracts or agreements that do not result from the PCS procurement process.

HHS agency staff checks whether state owned or state leased space is available in the general location in which the space is needed. HHS agency staff can use the [Texas Facilities Commission Conference Room Reservation Portal](#) to determine if state space is available that will meet the agency's need.

When the approved requisition is received by PCS, it is reviewed for completeness and assigned to the appropriate procurement team. The assigned purchaser determines the purchase method. If required, bids are obtained and the requester is consulted to confirm the winning bid meets the requester's needs.

If a hotel or conference center requires an HHS agency to agree to certain conditions for use of their space, the conditions will be reviewed and approved by PCS and, if required, HHS agency's legal counsel. If approved PCS attaches the conditions to the purchase order. PCS issues a purchase order and provides a copy to the hotel/facility and the requesting entity. HHS Agency may sign any final contract or agreement that results from the PCS procurement process.

## 5.5 Office Supply Purchases

Please reference HHS Online Office Supply Ordering System (OSOS) User's Guide for Requestors. [http://hhscx.hhsc.state.tx.us/admin/purch/procure\\_manual/officesupplyordersys.pdf](http://hhscx.hhsc.state.tx.us/admin/purch/procure_manual/officesupplyordersys.pdf)

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Approvers and Accounts Payable Staff. This is the user's guide for the integrated HHS - Office Supply Ordering System (OSOS) that has been developed by the HHS Purchasing and Contracting Services (PCS) Division in compliance with the Comptroller of Public Accounts/Texas Procurement and Support Services' (CPA/TPASS) awarded Term Contract - Tier One Partners Alliance Term Contract 615-A1.

The goal of the OSOS is to reduce:

- the cost of office supply purchases by leveraging the buying power of HHS agencies; and
- staff resources needed in purchasing and fiscal departments to process and pay for office supply orders.

OSOS accomplishes these goals by providing to program requesters (non-purchasers) a web based, easy to use, direct ordering method to T1PA/Office Depot. Products marketed by Texas Industries for the Blind and Handicapped (TIBH) are continually added to the system to ensure compliance with the State Use Law requiring utilization of products and services from TIBH.

[Click here](#) to access the HHS Online Office Supply Ordering System (OSOS) User's Guide for Requestors, Approvers and Accounts Payable Staff.

### 5.6 Moving Service Purchases

To procure moving services, the HHS agency/program requesting the moving services must submit a requisition reflecting zero-dollar to initiate procurement. Once the requisition is approved, it will be assigned to the appropriate procurement team.

- The assigned purchaser will provide information to the agency/program on available vendors that are currently under contract for moving services.
- Once the agency/program receives the list of vendors under contract, the agency/program is responsible for providing PCS with the date, time, and point of contact for the initial walk-thru.
- After the moving date details are received, the assigned PCS purchaser will provide the moving details and coordinate walk-thru(s) with the identified vendor(s).
- Based on the provided moving details, the selected vendor(s) will provide quotation back to PCS.
- PCS is then responsible for forwarding the quotation to the agency/program for review and confirmation. After the agency/program selects the vendor they will be using, PCS will communicate to the vendor the move date and essential details.
- The PCS purchaser must then update the initial requisition with the moving service cost and route for approval.
- After the agency/program approves the requisition with added cost for the moving service, PCS initiates the purchase order and coordinates with the selected vendor.

### 5.7 Furniture Purchases

When requesting to purchase furniture, the Texas Department of Criminal Justice (TDCJ) & Texas Industries for Blind & Handicapped (TIBH) are set aside purchases and must be used first if the product is available through TDCJ or TIBH.

The initial step to purchase furniture is to check if the desired product is under term contract. If the product is not on term contract, apply for a product waiver for the Texas Department of Criminal Justice (TDCJ). If the

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approval is asked, the requestor can proceed with procurement from an outside vendor. When proceeding with an outside vendor, the following must be considered:

- \$0.00 to \$5,000.00 - Send to at least one HUB on Central Masters Bidder List (CMBL)
- \$5,000.00 to \$25,000.00 - Must send to at least three vendors on CMBL and two vendors must be HUB
- Over \$25,000.00 - Must be sent to TPASS. TPASS will do the solicitation or assign back to agency to process, this must be posted on the Electronic State Business Daily (ESBD)

### 5.8 Recycled, Remanufactured, and Environmentally Sensitive Products (First Choice):

#### 5.8.1 Policy Statement

Definition:

“First Choice” products are items on state term contract that are manufactured from recycled, remanufactured, or environmentally sustainable /environmentally sensitive material. [Texas Government Code, Chapter 2155.448](#) requires state agencies to give purchasing preference to these term contract-defined First Choice items. State agencies may purchase non-green items (i.e., the virgin equivalent) instead of First Choice products in certain circumstances; however in doing so, they must create a justification memo for inclusion in the procurement file for that particular purchase transaction, and this memo is subject to possible audit by the CPA.

HHS agencies comply with [Texas Government Code §2155.448\(b\)](#) regarding the purchase of recycled items identified by CPA as First Choice. In addition, HHS agencies purchase recycled goods to the maximum extent practical. (see HHS Policy memorandum – Purchase and Reporting of First Choice).

Statute requires state agencies to purchase specific recycled items identified as First Choice and to provide annual reports on these purchases. Justification must be provided when a First Choice item is not purchased in compliance with the First Choice program. This policy sets minimum requirements that agencies may choose to exceed.

The CPA has identified the following items, regardless of dollar amount, as First Choice:

- Re-refined Motor Oils and Lubricants
- Recycled-content Toilet Paper
- Recycled-content Toilet Seat Covers
- Recycled-content Paper Towels
- Recycled-content Printing Paper
- Recycled-content Copier Paper
- Recycled-content Computer Paper
- Recycled-content Business Envelopes
- Recycled-content Plastic Trash Bags
- Recycled-content Plastic-covered Binders
- Recycled-content Recycling Containers
- Energy Star Labeled Copiers

Virgin Equivalent Product: For this policy, a virgin equivalent product is one designated as First Choice but purchased as non-recycled, non-re-refined, or non-Energy Star (i.e. non-green).

Justification Memo: A required memorandum, signed by the agency's Commissioner or delegated designee, justifying the purchase of a virgin equivalent rather than the First Choice product.

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## 5.9 Payments

### 5.9.1 Advance Payments

With certain exceptions, a state agency may not pay for goods or services before their delivery to the agency. The exceptions to this policy are as follows:

- A state agency may pay rent for leased space a maximum of seven days before the payment due date.
- A state agency may pay the cost of a periodical subscription a maximum of six weeks before it begins.
- A state agency may pay in advance the entire cost of a maintenance contract.
- A state agency may make an advance payment to a federal agency or another state agency for goods purchased from the agency if the advance payment will expedite the delivery of the goods.
- A state agency may make an advance payment if significant cost savings would result from making the payment in advance.
- A state agency may make an advance payment to a vendor who is selling specialized or proprietary goods or services to the agency if the vendor requires the payment to be made in advance.
- A state agency may pay tuition directly to an institution of higher education not earlier than the 42nd day before the class begins. A state agency, however, may not reimburse a state employee for tuition before the class begins.

### 5.9.2 Restricted Expenditures

A state agency that needs to make an advance payment for a reason not listed above may do so only if the agency determines before making the payment that making the payment in advance is necessary and would serve a proper public purpose.

The Comptroller may request additional information to justify any advance payment, including an advance payment that would be made under the circumstances listed above.

A state agency that makes an advance payment to a vendor is responsible for ensuring that the vendor provides the good or service to the agency. The agency is responsible for pursuing appropriate legal remedies to recover the payment if the vendor fails to provide the good or service. A state agency that needs assistance in determining whether an advance payment may be made should contact Accounts Payables office.<sup>10</sup>

### 5.9.3 Documentation Requirements

The agency must retain in its files documentation that explains the necessity and proper public purpose of an advance payment. Upon request, the agency must make the documentation available to the Comptroller during a pre-payment or a post-payment audit.

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<sup>10</sup> **Sources:** Texas Government Code Annotated Section 2113.001(2) (Vernon Supp. 2006); State Purchasing and General Services Act, Texas Government Code Annotated Section 2151.003(1) (Vernon Supp. 2007) (a statutory reference to the Texas Building and Procurement Commission means the Texas Facilities Commission in certain situations), Sections 2155.383, 2155.386 (Vernon 2000). Section 2175.001(1-a) (Vernon Supp. 2007), Section 2175.368(2) (Vernon 2000); Article IX, Section 11.07(a) of the General Appropriations Act. See the Opinion of the Texas Attorney General No. MW-55 (1979).

## Section 6: Agency Reporting Requirements

### 6.1 Reports & Notifications

The following reports and notifications are required by the Legislature, Legislative Budget Board (LBB), Comptroller of Public Accounts (CPA) rules, or other statutory authority:

#### 6.1.1 First Choice Reporting

##### ~~Recycled, Remanufactured and Environmentally Sensitive Products~~

~~According to [Texas Government Code §2155.448\(c\)](#), HHS agencies are required to make two annual reports that address First Choice purchases during the previous fiscal year.~~

- ~~Each state agency to report First Choice expenditures to CPA. The report is due by January 1 of each year and is filed using the CPA Web Application Portal.~~
- ~~Annual Financial Report (AFR) to the Governor. [Texas Government Code §2101.0115 \(c\) \(14\)](#) requires each state agency to report First Choice expenditures as a portion of the agency's Annual Financial Report (AFR) to the Governor, Legislative Budget Board, and State Auditor. The agency's First Choice report to CPA is used to complete the First Choice portion of the AFR. The AFR deadline is December 31.~~

~~The CPA compiles the majority of the data required for each agency's annual report and provides this information on their web application portal. Their data provides the automated term contract purchases of First Choice and virgin equivalent products. If the existing data shows the agency has only made First Choice purchases during the year, the agency is not required to add any information for the CPA report. If however, CPA's data shows the agency has procured virgin equivalents of First Choice products, the agency will need to report additional information from the justification memos for those purchases.~~

#### 6.1.2 TIBH Exception Reporting

##### Monthly Report on Set Aside Exceptions (Due 5th working day of each month)

If an HHS agency determines that a product/service offered by CPA needs to be purchased from a source other than CPA, an exception justification must be included in the file.

When an applicable good or service is not purchased using a CPA contract, [Texas Human Resources Code §122.016](#) requires PCS to file a TIBH exception report to CPA.

The Texas Human Resources Code, [Section 122.016, Subsection \(b\)](#), requires the CPA to provide a monthly report to the Texas Council for Purchasing from Persons with Disabilities (TCPPD) listing all items/services purchased as exceptions to Subsection (a) of Section 122.016 and [Texas Government Code Section 2155.138 Subsection \(a\)](#). In order for CPA to provide this information to the TCPPD, each state agency must provide to CPA all delegated purchases made as exceptions to the set-aside contracts as listed below.

#### 6.1.3 TDCJ and TCI (Prison Made Goods Act Reporting

Texas Department of Criminal Justice (TDCJ)/Institutional Division (Prison Made Goods Act) [Texas Government Code Sections 497.023-497.029](#)

The Prison Made Goods Act requires that an agency purchase goods made by and services offered by the TCI. If an HHS agency determines that a product/service offered by TCI as set forth in its catalog of products and services needs to be purchased from a source other than TCI, a waiver from TCI must be obtained. The waiver request can be based on a substantial difference in specifications which could include delivery, or a substantial price differences, or both.



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The waiver request shall include the following as a minimum:

- Name and title of the appropriate agency contact person;
- Agency name and mailing address;
- Agency contact phone and FAX numbers;
- Description of product/service - Include complete specifications that address the characteristics of the item, construction method, detail of differences between the product/service desired and the product/service offered by TCI;
- Justification - Explain why the TCI product/service does not meet the agency requirement;
- Price & Quantity - State the quantity and the estimated unit price of each item. If system furniture, be certain to specify quantity and cost of completed workstations. If the request is for component parts only, specify this and identify the parts; and
- Delivery time from receipt of order - State a realistic time requirement. A delivery date inconsistent with contract terms or normal industry standards shall be justified by a written certification from the PCS Associate Commissioner. Specify delivery in terms of month, day and year that the product/service is needed.

Waiver requests are evaluated by TCI on a case-by-case basis. If the request is denied, an appeal of TCI's decision can be made through CPA. Further clarification may be obtained by calling TCI Customer Service at (409) 294-6384.

Once the approved waiver is received, the purchaser will complete the procurement using the appropriate purchasing method.

### 6.1.4 Vendor Performance Reporting

A vendor performance tracking report is required for all unsatisfactory purchases over \$25,000. The CPA/Texas Procurement and Support Services Division (CPA/TPASS) administers a vendor performance program for use by all ordering entities per [Texas Government Code, Title 10, Subtitle D, Section 2155.077](#) and [34 Texas Administrative Code 20.108](#).

The purpose of the Vendor Performance Tracking System (VPTS) is as follows.

- Identify vendors that have exceptional performance.
- Identify vendors that have unsatisfactory performance.
- Aid purchasers in making a best value determination based on vendor past performance.
- Protect the state from vendors with unethical business practices.
- Identify vendors that have repeated delivery and performance issues.
- Provide performance scores in four measurable categories for the CMBL vendors.
- Track vendor performance for delegated and exempt purchases.
- Allow the end user/contract manager the ability to report vendor performance.
- Create a vendor performance report and database as required for purchases over \$25,000 from contracts administered by the CPA/TPASS or any other purchase over \$25,000 made through delegated authority granted by CPA/TPASS [34 Texas Administrative Code 20.108](#).

VPTS Reports are not required for:

- Enrollment Contracts
- Interlocal agreements
- Interagency agreements
- Memorandums of understanding



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- Sub-contracts issued by a company with which HHS Agency has a contract
- Grant-funded procurements (if the funds are directly used to carry out an HHS program or purchase the materials to do so).
- Work performed by sub-recipients (a non-state entity that expends state awards received from a pass-through entity to carry out a state program, OR a recipient of other state awards directly from a state awarding agency) UNLESS the agency expends funds/issues a procurement in support of work the sub-recipient is performing. Grant-funded work performed by the sub-recipient itself is not expected to comply with Vendor Performance Reporting.

### 6.1.5 HUB Reporting

On a monthly basis, the HHS HUB Program Office compiles expenditure information relating to each HHS agency's use of HUBs, including subcontractors and suppliers. Report information is maintained by agency division, reflecting monthly and year to date expenditures with HUBs and Non-HUBs.

Agencies must refer to the CPA's CMBL and HUB Directory at:

<https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp> to locate HUBs. If an agency is unable to locate a HUB from the CPA's CMBL and HUB Directory, the agency must make a written notation in the procurement file of all the reference sources used for the purchase.

The HHS HUB Office submits a HUB report semi-annually (September 1 – February 28) and annually (September 1 - August 31) to CPA on behalf of each HHS agency. The HUB Report includes a summary and analysis of expenditures made to certified HUBs and is used to ensure compliance and tracking.

HUB Reports and reporting procedures are available online at:

<http://www.window.state.tx.us/procurement/prog/hub/hub-reporting>.

The HHS HUB Office also submits an optional supplemental letter to CPA as a component of the semi-annual and annual HUB report outlining HHS outreach and good faith efforts pertaining to the utilization of HUBs.

The HUB report is used by agencies to track their expenditures and as a benchmarking tool to meet or exceed their HUB utilization goals in each of the following procurement categories:

- Heavy Construction
- Building Construction
- Special Trade Construction
- Professional Services
- Other Services
- Commodity Purchasing

### 6.1.6 Professional and Consultant Services Reporting

[Texas Government Code Section 2254.036](#) requires that after a state agency's contract with a consultant has ended, copies of all documents, films, recordings, or reports compiled by the consultant must be filed with the Texas State Library. In addition, on request, a state agency shall supply these documents to the Legislative Budget Board and the Office of the Governor.

#### 6.1.6.1 Consultant Services

When planning a purchase of Major Consultant Services the agency will:

- Notify the LBB and the Governor's Office of Budget and Planning that the agency intends to contract for consultant services.

Provide information to the LBB and the Governor's Office of Budget and Planning to demonstrate that:

- There is a substantial need for the consulting contract;

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- The agency cannot adequately provide the needed consulting services with its own personnel or obtain the consulting services through a contract with a state governmental entity;
- The agency will base its choice of contractors upon demonstrated competence, knowledge, and qualifications and upon the reasonableness of the proposed fee for the services;
- If other considerations are equal, the agency will give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state; and
- Once the Governor's Budget and Planning Office agrees that the consulting services are necessary, and are in agreement with the information they receive, they will issue "finding of fact" and send it to the agency.

The agency is responsible for publishing a notice of the procurement in the Texas Register for at least 30 days before entering into the major consulting contract. Such notices must be submitted to the Secretary of State following the agency's processes. Once a major consulting services contract is awarded, the requesting agency is responsible for posting the award in the Texas Register. The agency requesting the purchase is responsible for fulfilling these requirements and attaching associated documentation to the requisition if PCS will be involved in the purchase. More detailed information regarding these requirements can be found at the following site: <http://www.governor.state.tx.us/divisions/bpp/guidelines>

### 6.1.6.2 Professional and Consultant Services

[Texas Government Code Section 2254.006](#) requires HHS agencies to provide written notice to the LBB of a contract for professional or consulting services, other than a contract for physician or optometric services, if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$14,000. The notice must be on a form prescribed by the LBB and filed not later than the 10th day after the date the agency enters into the contract.

### 6.1.7 Construction Contracts

#### (Due to LBB no later than 10 days after contract award)

HHSC must provide written notice to the LBB of a contract for a construction project if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, is \$14,000 or greater. The notice must be on a form prescribed by the LBB and filed not later than the 10th day after the date the agency enters into the contract.

### 6.1.8 Procurement Plan

In accordance with [Texas Government Code, Section 2155.132](#) authorizes CPA to require each agency to formulate an agency procurement plan that identifies an agency's management controls and purchasing oversight authority in accordance with the policy guidance contained in the CPA Procurement Manual. A Procurement Plan must be on file at CPA and updates must be submitted as necessary. If there are no updates to the plan in a fiscal year, a letter must be sent to indicate there are "no changes". Procurement Plan submittals or "no change" letters are due to CPA's Procurement Review by November 30th of each year.

#### Contents of the Procurement Plan:

1. PCS Organizational Chart
2. Procurement Card Procedures
3. Protest Procedures
4. List and sample of signatures authorized to approve or sign a proprietary justification letter
5. List and sample of signatures authorized to approve agency membership fees
6. The training and certification status of the purchasing employees
7. List of purchasers authorized to purchase on behalf of the State

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8. Invitation for Bid (IFB) Form
9. Internal Purchasing Procedures
10. PCS 130 Conflict of Interest Statement (annually signed statements for each purchaser or a memo stating the forms are in the purchaser's personnel file).
11. Internal purchasing procedures for SAM (System of Award Management)
12. High Priority Purchases
13. Contract Advisory Team Procedures.

### 6.1.8.1 Purchasing with Procurement Card

The purpose of the Health and Human Services (HHS) Procurement Card Program is to establish an efficient, cost-effective method of purchasing and paying for goods and services while maintaining strict compliance with all state and federal laws, rules and regulations governing procurement and accounting functions.

[Click here](#) to reference the HHS Procurement Card Program policies and procedures.

## Document Change Tracking Log

In an effort to provide timely information about HHS procurement and contracting procedures, please be advised of the following changes to the Procurement Manual which are effective immediately. The changes below supersede all previous versions.

**Version 1.0 – published December 5, 2014**

**Version 1.1 - revised April 2015**

Date	Section	Section Title	Procurement Change
12/5/14	1.2	Health and Human Services Commission's (HHSC) Authority to Publish Manual	<b>Added</b> - Updated to HHSC Executive Commissioner and the Deputy Executive Commissioner of Procurement and Contracting Services.
12/5/14	2.8	Ethics and CPA Delegated Purchases	<b>Added</b> - PCS 130 Conflict of Interest Form and PCS 140 Acknowledgement of Responsibilities and Duties Form were updated. All PCS Staff will complete both the PCS 130 and the PCS 140 at the PCS Annual Conference or no later than November of each year. The purchaser, purchaser's supervisor and PCS maintain a copy of the forms.
12/5/14	4.2.1	Major Contracts	<b>Added</b> - Major contract dollar amount increased to \$10,000,000 for Contract Advisory Team (CAT) review.
12/5/14	4.2.10	Historically Underutilized Business (HUB)	<b>Added</b> - Definition updated to include Service Disabled Veterans. HUB total contract value percentages added. Comptroller's "Introduction to the Statewide HUB Program" video link added.
12/5/14	4.3.2	Requisition Requirements	<b>Added</b> - If there is a question about the primary purpose of a contract, contact one of the Managers of PCS.
12/5/14	4.7	State and Federal Debarment	<b>Added</b> - New section added to provide instructions for checking Debarred Vendor List and System of Award Management (SAM) and required documentation for procurement file.
12/5/14	5.1.2.1	Competitive bidding required for printing services	<b>Added</b> - Clarifies that PCS must provide TCI a final opportunity to negotiate on price, if TCI submitted a response to the Print Shop Job Request Form.
12/5/14	5.3.4	Sole Source/Proprietary Purchases	<b>Added</b> - Sole Source Purchase Justification is not required for an agency to use funds to provide training and education for staff as long as the training or education is related to the duties or prospective duties of the employee.

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Date	Section	Section Title	Procurement Change
			<p>PCS Associate Commissioner signature and printed name are required. All documentation to support this justification should be attached.</p> <p>All proprietary purchases over \$25,000 will be posted to the Electronic State Business Daily (ESBD) for a minimum of 14 days.</p>
12/5/14	5.3.5.2	Justifying an Emergency	<b>Added</b> - PCS Associate Commissioner signature and printed name are required on form.
12/5/14	5.3.9.3	Purchase of HHS Printing Service Policy	<b>Added</b> - Process for print requests and print-related service procurements exceeding \$1,000 in estimated purchase price described.
12/5/14	6.1.5	HUB Reporting	<b>Added</b> - The HHS HUB Office submits a HUB report semi-annually (September 1 – February 28) and annually (September 1 - August 31) to CPA on behalf of each HHS agency.
12/5/14	6.18	Procurement Plan	<b>Added</b> - Internal purchasing procedures updated to include SAM (System of Award Management). High priority purchases and Contract Advisory Team procedures added.
3/24/15	5.1.1.2	Temporary Staffing Service Purchase	<p><b>Added</b> - HHS has an established contract with Texas Industries for Blind &amp; Handicapped (TIBH) for purchasing temporary staffing services. TIBH contracts with additional temporary staffing agencies. As a result, the location of the requestor will determine which TIBH temporary staffing agency will be used to obtain the requested temporary staffing services. If the area of the requestor has multiple contracted TIBH temporary staffing agencies, the first temporary staffing agency assigned to the requesting HHS agency will be contacted. If the first contacted temporary staffing agency cannot fill the needed staff position, they will issue a waiver allowing PCS to send the temporary staffing request to the second listed temporary staffing agency. If neither agency can fill the position, the request will go out to open market.</p> <p>TIBH may determine the job description doesn't meet the referenced class and/or bill rate shown on the request provided, so TIBH may request a change in the requested temp's class or bill rate to fill the position. Agencies are notified of the requested change. The requesting HHS agencies may approve the change. If so, the requisition</p>

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Date	Section	Section Title	Procurement Change
			<p>may need to be changed and reapproved or the number of hours lowered and the bill rate changed to equal the requisition total.</p> <p>Requesting Temporary Staffing Services</p> <p>When submitting a requisition for temporary staffing services, the below listed information needs to be provided as required in the Temp Services REQ Requirement Form that is completed by the assigned PCS purchaser.</p> <ul style="list-style-type: none"> <li>• Job Class#</li> <li>• Job Class Title</li> <li>• Rate (Entry Level, Experienced, Expert)</li> <li>• Job Description</li> <li>• Knowledge, Skills, and Abilities</li> <li>• Work Hours (AM/PM)</li> <li>• Work Days (Mon-Fri)</li> <li>• Work Hours per Week</li> <li>• Start Date / End Date</li> <li>• Department Name</li> <li>• Department Address</li> <li>• Supervisor Name</li> <li>• Supervisor Phone Number</li> <li>• Additional Contact Name</li> <li>• Additional Contact Phone Number</li> <li>• Name of Temp (if known)</li> <li>• Texas Region</li> </ul> <p>Note: Throughout the procurement process, the assigned PCS purchaser will serve as the point of contact between the contracted temporary staffing agency and agency requesting service. If you do not know your assigned PCS purchase, please reference Section 3.1.1 - Customer Service Team.</p>
3/24/15	5.7	Furniture Purchase	<p><b>Added</b> - When requesting to purchase furniture, the Texas Department of Criminal Justice (TDCJ) &amp; Texas Industries for Blind &amp; Handicapped (TIBH) are set aside purchases and must be used first if the product is available through TDCJ or TIBH.</p> <p>The initial step to purchase furniture is to check if the desired product is under term contract. If the product is not on term contract, apply for a product waiver for the</p>

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Date	Section	Section Title	Procurement Change
			<p>Texas Department of Criminal Justice (TDCJ). If the approval is asked, the requestor can proceed with procurement from an outside vendor. When proceeding with an outside vendor, the following must be considered:</p> <ul style="list-style-type: none"> <li>• \$0.00 to \$5,000.00 - Send to at least one HUB on Central Masters Bidder List (CMBL)</li> <li>• \$5,000.00 to \$25,000.00 - Must send to at least three vendors on CMBL and two vendors must be HUB</li> <li>• Over \$25,000.00 - Must be sent to TPASS. TPASS will do the solicitation or assign back to agency to process, this must be posted on the Electronic State Business Daily (ESBD)</li> </ul>
7/16/15	2.1.8	Acceptance of Electronically Transmitted and Electronically Signed Contract Record	<p><b>Added</b> - Pursuant to HHS Circular C-038, it is the policy of HHSC that HHS agencies may accept electronically signed records, including records transmitted electronically by fax or email, and scanned documents that are attached to emails, as valid signatures for contract. The Electronic Signature Risk Matrix, or equivalent, must be used to determine whether electronically-signed contract records may be accepted.</p> <p>Interagency contracts between HHS agencies are regarded as low risk, and electronically signed records may be accepted without the need for further risk analysis.</p>
7/16/15	5.5	Office Supply Purchases	<p><b>Added</b> - Please reference HHS Online Office Supply Ordering System (OSOS) User's Guide for Requestors. <a href="http://hhscx.hhsc.state.tx.us/admin/purch/procure_manual/officesupplyordersys.pdf">http://hhscx.hhsc.state.tx.us/admin/purch/procure_manual/officesupplyordersys.pdf</a></p>
7/16/15	5.6	Moving Service Purchases	<p><b>Added</b> - To procure moving services, the HHS agency/program requesting the moving services must submit a requisition reflecting zero dollar to initiate procurement. Once the requisition is approved, it will be assigned to the appropriate procurement team.</p>
7/16/15	5.4.1	Procedure for Training and Conference Registrations. Pertaining to Use of Procurement Cards	<p><b>Changed</b> - When submitting a requisition to request a PO, the requester must submit the purchase request prior to the training registration date (recommended 3 weeks prior to training registration date).</p> <p><b>Added</b> - If the vendor will take a procurement card for payment, the requester does not need to submit a purchase request, using a purchase requisition. However, the requester must receive agency and/or program approval before using a procurement card to purchase</p>



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			<p>training and conference registrations. Please note if HHS Agency/Program does not have the authority to use their assigned procurement card to complete purchases, the requester will have to submit a purchase request specifying procurement card as method of payment. For additional information on procurement cards, please reference the HHS Procurement Card Program Policy Manual.</p> <p><b>Changed</b> - Please note procurement card(s) shall NOT be used to pay for training course and seminar registration fees if payment is going to another state agency, an institution of higher education, or IT-related. When payment is provided between state agencies, state agencies must submit interagency payments for goods and services using the Recurring Transaction Index (RTI) process in USAS when funding sources for both agencies are held in the State Treasury.</p>
7/22/15	6.1.4	Vendor Performance Reporting	<p><b>Added</b> - VPTS Reports are not required for:</p> <ul style="list-style-type: none"> <li>• Enrollment Contracts</li> <li>• Grant-funded procurements (if the funds are directly used to carry out an HHS program or purchase the materials to do so).</li> <li>• Work performed by sub-recipients (a non-state entity that expends state awards received from a pass-through entity to carry out a state program, OR a recipient of other state awards directly from a state awarding agency) UNLESS the agency expends funds/issues a procurement in support of work the sub-recipient is performing. Grant-funded work performed by the sub-recipient itself is not expected to comply with Vendor Performance Reporting</li> </ul>
8/07/15	5.3.9.5.2	Food and Equipment Related to Food Preparation or Storage	<p><b>Added</b> - Pursuant to <a href="#">Texas Government Code §2155.144</a>, an agency is not delegated the authority to procure common commodities or services, including goods and services acquired for direct consumption or use by the agency in the day-to-day support of the agency's administrative operations, such as office supplies and equipment, building maintenance and cleaning services, or temporary employment services.</p>
8/28/15	4.3.2	Requisition Requirements	<p><b>Changed</b> - The Sourcing Team Manager then assigns the requisitions to a PCS Purchaser within 1 business day of receiving requisition from RIT. The PCS Purchaser will then:</p> <ul style="list-style-type: none"> <li>• send a courtesy email to the end user within 2 business days of requisition assignment; and</li> </ul>



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			•analyze the requisition to determine the required purchasing method and ensure best value to the State.
12/01/15	6.1.1	First Choice Reporting	<b>Deleted</b> - Senate Bill 59 passed in the 83rd legislative session repealed the annual reporting requirement for recycled, re-manufactured, or environmentally sensitive commodities or services. See SB 59, Section 99, (21). The following provisions are repealed: SB 59, Section 99, (21) Subsection (c), Section 2155.448, Government Code. Effective: Sept. 1, 2013 <a href="http://www.capitol.state.tx.us/tlodocs/83R/billtext/pdf/SB00059F.pdf#navpanes=0">http://www.capitol.state.tx.us/tlodocs/83R/billtext/pdf/SB00059F.pdf#navpanes=0</a>

The Procurement Manual is located at: <http://hhscx.hhsc.state.tx.us/Admin/purch/ProcureManual.shtml>  
Any questions or comments related to the Procurement Manual can be emailed to PCS Policy and Staff Development at [PCS\\_Training@hhsc.state.tx.us](mailto:PCS_Training@hhsc.state.tx.us).